

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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|---|--|
| <input checked="" type="checkbox"/> Affirm and adopt (no changes) | <input type="checkbox"/> Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> Affirm with changes | <input type="checkbox"/> Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> Reverse | <input type="checkbox"/> Second Injury Fund (§8(e)18) |
| <input type="checkbox"/> Modify | <input type="checkbox"/> PTD/Fatal denied |
| | <input checked="" type="checkbox"/> None of the above |

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Matthew Piagnarelli,
 Petitioner,

vs.

Paec High School,
 Respondent,

NO: 12 WC 43507

14I WCC0301

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, permanent partial disability, causal connection, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 6, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **APR 28 2014**

MB/mam
 O: 4/17/14
 43


 Mario Basurto


 David L. Gore


 Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PIAGNARELLI, MATTHEW

Employee/Petitioner

Case# 12WC043507

14IWCC0301

PAEC HIGH SCHOOL

Employer/Respondent

On 5/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0544 LOSS & PAVONE PC
JOSEPH J LOSS
1920 S HIGHLAND AVE SUITE 203
LOMBARD, IL 60148

0863 ANCEL GLINK
ERIN BAKER
140 S DEARBORN ST 6TH FL
CHICAGO, IL 60603

14IWCC0301

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)(18)) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MATTHEW PIAGNARELLI

Employee/Petitioner

v.

PAEC HIGH SCHOOL

Employer/Respondent

Case # **12 WC 43507**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **April 24, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. **XXX** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. **XXX** ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ **XXX** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. **XXX** What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On **November 16, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$53,105.26**; the average weekly wage was **\$1327.63**.

On the date of accident, Petitioner was **35** years of age, *married* with **3** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

ORDER

For the reasons set forth in the attached conclusions of law, the Arbitrator finds that Petitioner sustained an accidental injury on November 16, 2012 which arose out of and in the course of his employment by Respondent. The Arbitrator further finds that Petitioner established a causal connection between that accidental injury and his current right foot condition of ill-being.

Medical Benefits

Respondent shall pay reasonable and necessary medical expenses of \$2,711.50 (PX 4), subject to the fee schedule. In accordance with the parties' stipulation (Arb Exh 1), Respondent is entitled to Section 8(j) credit for any payments made by its group carrier toward these expenses. Respondent shall hold Petitioner harmless against any claims made by its group insurance carrier.

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of \$712.55 a week for a period of 25.05 weeks because the injury sustained caused the 15% loss of use of the right foot as provided in Section 8(e)(11) of the Act.

THE ATTACHED STATEMENT OF FACTS AND CONCLUSIONS OF LAW ARE INCORPORATED HEREIN.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Molly C. Mason
Signature of Arbitrator

May 6, 2013
Date

ICArbDec p. 3

MAY -6 2013

Matthew Piagnarelli v. PAEC High School
12 WC 43507

Arbitrator's Findings of Fact

Petitioner testified he has worked as a teacher for Respondent for ten years. His teaching assignments have varied over the years but he has never taught physical education. As of the hearing, he was teaching pre-algebra and world history. He is based at a high school attended by students who have learning disabilities and emotional disorders. Some of the students at this school are in the "low cognitive" category. Gang rivalry is an issue at the school. Petitioner testified he "always has to be conscious" of this rivalry. Physical confrontations are not unusual. The school is equipped with wall and floor restraints. The school also has an "isolation area" and an "isolation room," which is akin to a padded cell. Petitioner testified that, while he does not fear for his own safety, due to his years of experience at the school, he has to "take students down" on a regular basis.

Petitioner testified that the school has a multi-function room that is used as a cafeteria, a gymnasium and an auditorium. The floor of this room is composed of tile over concrete. Although someone usually sweeps up after lunch, the floor is usually dirty and sticky.

Petitioner denied injuring his right foot prior to November 16, 2012. Petitioner testified that the school's physical education teacher was absent that day and he was asked to supervise three classes of students during gym period. Petitioner's co-worker, Jack Fleming, was also supervising. Gym was conducted in the multi-function room. Petitioner testified this room has two exits. The classes were playing basketball in different areas of the room. A ball got loose from one group of students. The ball started rolling toward the south exit, near another group of students. Petitioner testified that "it can be an issue" if equipment begins to drift toward an exit. Petitioner also testified that he has seen students get very upset over relatively trivial matters, such as tripping over a loose ball. When he saw the ball rolling toward the south exit and the other group of students, he started running in order to retrieve the ball and thus head off any possible problem. He testified he felt it necessary to retrieve the ball so as to keep the various groups of students contained. He made a sudden turn and pivoted off of his right foot in order to turn left. As he did this, he felt a "pop" and a sharp pain in his right foot.

Petitioner testified this incident occurred on a Friday, near the end of the school day. He "thought [he] could tough it out" and finished the day. He completed an accident report that day. When he got up the next day, a Saturday, he realized he could not put weight on his right foot. He went to the Emergency Room at Adventist LaGrange Memorial Hospital.

The Emergency Room records of November 17, 2012 reflect that Petitioner complained of pain in the outside of his right foot. The records also reflect that Petitioner was "playing basketball yesterday" when he felt a "pop." Right foot X-rays revealed an "isolated, minimally displaced 2 transverse fracture of the tuberosity of the base of the right fifth metatarsal bone." The radiologist described this as a "pseudo-Jones fracture, likely related to an avulsion injury at

the insertion of the peroneus brevis tendon, with mild overlying soft tissue swelling." PX 1, pp. 3, 19. The right foot was placed in a cast. Petitioner was provided with crutches and was instructed to avoid weight bearing and see Dr. Vucicevic in two to three days. The Emergency Room physician restricted Petitioner to desk work "until cleared by orthopedist." PX 1, pp. 5, 15.

Petitioner testified he followed up with Dr. Robyn Vargo at Hinsdale Orthopaedics on Monday, November 19, 2012. The doctor's records contain a multi-page "patient assessment" form signed by Petitioner on that date. A "history" section on the first page of this form reflects that Petitioner injured his right foot on November 16, 2012 when he "ran after basketball." This section also reflects that Petitioner denied any previous right foot problems. PX 2, p. 1. Dr. Vargo's typed note of November 19, 2012 reflects that Petitioner "work[s] as a coach, ran to get a ball and fell the wrong way." PX 2, p. 6. The note also reflects that Petitioner "ran to get a ball at work and moved the wrong way and twisted his right foot and ankle." PX 2, p. 7. Dr. Vargo reviewed the X-rays taken at the Emergency Room and interpreted them as confirming a "proximal third fifth metatarsal fracture [with a] Jones type pattern." On right foot examination, she noted point tenderness at the fifth metatarsal and a little bit of varus in stance. She placed Petitioner in a boot and told him to continue using crutches for four weeks. She instructed Petitioner to return to her in four weeks for repeat X-rays. She warned Petitioner that "there is a chance this will not heal without surgical intervention, which would be by way of screw fixation." PX 2, p. 7.

Petitioner testified he resumed working after seeing Dr. Vargo, despite being on crutches, but avoided performing any "take downs." He does not claim any temporary total disability. Arb Exh 1.

On November 27, 2012, Dr. Vargo issued a note excusing Petitioner from "any physical activity as he is non weight bearing by way of boot and crutches until his next follow-up appointment 12/17/12." PX 2, p. 8.

Petitioner returned to Dr. Vargo on December 17, 2012. The doctor noted decreased swelling. She indicated Petitioner denied having pain while wearing the boot and using crutches. She obtained new X-rays and interpreted them as showing "some radiolucency to suggest some bone re-absorption prior to healing." She instructed Petitioner to continue wearing the boot but gradually wean off the crutches. She issued another note excusing Petitioner from any physical activity for an additional four weeks. PX 2, p. 11.

Petitioner returned to Dr. Vargo on January 14, 2013. The doctor described the swelling and bruising as "cleared." She noted no tenderness on palpation. She obtained repeat right foot X-rays and interpreted them as showing "still incomplete union but significant change in a positive direction with further callus formation." PX 3, p. 3. She described the fracture as 80% healed. She directed Petitioner to start wearing a "laterally posted" gym shoe and maintain low impact activity for another four to six weeks. PX 3, p. 3. She again restricted Petitioner from physical activity. PX 3, p. 4.

Petitioner next saw Dr. Vargo on February 11, 2013. The doctor noted Petitioner was "back in a shoe and trying a little bit of a light jog without too much trouble." She obtained a new set of X-rays and interpreted them as demonstrating further callus formation. She instructed Petitioner to "ramp up impact activity per pain tolerance" and return to her in May for final X-rays. PX 3, p. 1.

At the April 24, 2013 hearing, Petitioner testified he has an upcoming appointment with Dr. Vargo. He can walk fairly well on flat surfaces but experiences pain when traversing uneven surfaces. He typically plays softball in the summer but anticipates being limited in that regard. He typically stands while teaching. His right foot discomfort is at its worst at the end of a workday. In the past, he would be the one at his school to chase students who might try to run out of the building. He no longer does this since it would involve running on uneven ground. He has trouble keeping up with his three children, who are 7, 5 and "almost 2" in age. He applies ice to his foot from time to time. He takes Ibuprofen for pain.

Under cross-examination, Petitioner testified he was in the gym for about fifteen minutes before the accident occurred. During that fifteen minutes, he was off to the side, observing. He identified his handwriting and signature on RX 1, an "Employee's Report of Injury." He completed and signed RX 1 the Monday after the accident. RX 1 sets forth an accurate account of his injury. [On RX 1, Petitioner indicated a "ball got loose from students" and his foot broke when he ran to get the ball.] Before the accident, he did not notice anything unusual about the gym floor other than that the floor was dirty. He had eaten lunch with his students in the same room, which is known as the "café-gym-itorium", before the accident took place. It was when he turned to run after a loose ball that he was injured. He denied tripping over his own feet or falling. He was wearing gym shoes when the accident occurred. Since he is not a doctor, he is not sure why the injury occurred.

On redirect, Petitioner testified he made a sudden turn after seeing that the ball had gotten away from a group of students. The injury occurred as he turned to run after the ball.

Jack Fleming testified on behalf of Respondent. Fleming testified he has worked for Respondent since August of 2010. He is a "program assistant" at the same high school where Petitioner works. He and Petitioner have worked together since August of 2010. As a program assistant, he provides "behavior management" and academic support.

Fleming testified that he and Petitioner were in the gym, on the sidelines, before Petitioner was injured. A ball rolled. Petitioner went to retrieve this ball and "came up limping." Fleming was leaning against the padded wall of the gym when Petitioner was hurt. The accident happened about twenty minutes after he and Petitioner began working in the gym.

Fleming testified he did not notice any floor stickiness or other safety hazard in the gym before Petitioner's accident. Fleming identified RX 2 as a witness statement he completed and

signed in connection with the accident. He completed and signed RX 2 the "next day or so" after the accident, per Respondent's protocol. [RX 2, a witness statement completed by Fleming on November 19th, reflects that Petitioner "seemed to hurt his foot" on November 16th when he "ran after loose ball." It also describes the condition of the accident area as "fine."]

Under cross-examination, Fleming acknowledged that the students at the high school get into confrontations on a daily basis. One of his responsibilities is to control student behavior. Petitioner was trying to prevent a loose ball from going into a hallway at the time of the accident. Petitioner did this to avoid students running out into the hall after the ball and to prevent any student who might be out in the hall from gaining access to the ball. Fleming stated that, if the ball had entered the hallway, it would be anyone's guess as to what would happen next. It seemed to him that Petitioner was injured while running. Petitioner's accident was unavoidable and a consequence of bad luck. The gym floor can get dirty but a student usually "dry sweeps" the floor after lunch.

On redirect, Fleming testified that, while no students were misbehaving at the time of the accident, "staying ahead of the game is what we're shooting for."

Under re-cross, Fleming testified that, if a student had gained access to the loose ball, that student could have used the ball as a weapon against another student.

In response to questions posed by the Arbitrator, Fleming testified that there were about 15 to 20 students in the gym when the accident occurred. The other employees who were present at that time included Petitioner, the physical education teacher and "maybe others."

Arbitrator's Credibility Assessment

Petitioner was an articulate and credible witness, as was Fleming. They gave varying estimates as to the number of students present in the gym at the time of the accident but otherwise described their responsibilities and the tense atmosphere of the school in a very consistent manner.

Did Petitioner sustain an accident on November 16, 2012 arising out of and in the course of his employment?

There is no question that Petitioner's claimed accident occurred in the course of his employment. Petitioner and Fleming testified that the accident occurred on school premises during work hours.

The Arbitrator further finds that the accident arose out of Petitioner's employment. Petitioner was performing a work-related task at the time of his injury and was subject to an increased risk of injury by virtue of his unusual employment. Petitioner's formal job title may

be “teacher” but it is clear he also functions as a guard. His duties include maintaining order and preventing altercations. Immediately before the accident, he was trying to “take down” a loose ball so as to avoid having to “take down” students. Petitioner was attempting to “stay ahead of the game,” to use the words of Respondent’s witness, Jack Fleming. Because the ball had gotten loose from one group of students and was rolling toward another group, as well as the exit, Petitioner had a reasonable fear of a fight breaking out and made a sudden motion so as to run after the ball. It was when he made this motion that he got hurt. Fleming, a physically imposing individual whose duties include “behavior management,” completely legitimized Petitioner’s fear when he played out various scenarios under cross-examination. Fleming went so far as to say that, had a student in the hallway gotten his hands on the ball, he could have used it as a “weapon” against another student.

In finding in Petitioner’s favor on the issue of “arising out of,” the Arbitrator notes that “the clear rule in Illinois is that a claimant’s risk [of injury] is to be compared to the general public” rather than to individuals in the vicinity of the accident. Illinois Institute of Technology Research Institute v. Industrial Commission, 314 Ill.App.3d 149, 162 (2000). To paraphrase Professor Larson, the risk of attack faced by a lion tamer is not to be compared with that faced by others in the cage. Rarely has Larson’s analogy been more appropriate. Petitioner is a “lion tamer” of sorts. Under Illinois law, the risk he faced cannot be compared with that faced by Fleming. It can only be compared with that faced by someone outside the “cage.” Members of the general public are not called upon to pivot abruptly and begin running so as to pre-empt an altercation. [Also see Wilts v. State of Illinois, 12 IWCC 291, a case in which the Commission (Latz, Gore and Basurto) upheld the Arbitrator’s finding of accident in a case in which a “security therapy aide” injured her knee when she “turned the wrong way” and felt her knee pop as she started to run in order to provide aid to a co-worker during an altercation between two inmates.]

Did Petitioner establish causal connection?

The Arbitrator finds that Petitioner established a causal connection between his work accident of November 16, 2012 and his current right foot condition of ill-being. In so finding, the Arbitrator notes that Petitioner denied having any problems with his right foot prior to the accident. The Arbitrator has no reason to question this denial. Neither Petitioner’s accident report nor the treatment records describe any pre-accident right foot problems. RX 1. PX 1, p. 27. PX 2, pp. 1, 6. The Arbitrator also notes that the accident resulted in an abrupt change in Petitioner’s right foot condition. Petitioner testified to feeling a sharp pain in his foot immediately after pivoting. By the next morning, he was having trouble walking. The histories set forth in his treatment records are largely consistent with his testimony concerning the mechanism of injury. Right foot X-rays confirmed an injury consistent with trauma, i.e., a fracture. The record as a whole supports a finding of causation in this case.

Is Petitioner entitled to medical expenses?

At the hearing, Petitioner offered into evidence an itemized Emergency Room bill totaling \$1,803.50 and an itemized Hinsdale Orthopaedics bill totaling \$908.00 for services provided by Dr. Vargo from November 19, 2012 through February 11, 2013. PX 4. Respondent did not object to either of these bills.

Petitioner also offered into evidence various "Explanation of Benefit" forms reflecting payments made by his group carrier, Blue Cross/Blue Shield. PX 5. Respondent did not object to these forms.

The parties stipulated that, if the Arbitrator found the claim compensable and awarded the bills, Respondent would be entitled to credit under Section 8(j) for "all related payments made by its group insurance carrier," with Respondent holding Petitioner harmless against any claims made by said carrier. Arb Exh 1.

Having found that Petitioner established a compensable accident and causal connection, and there being no objection to the bills in PX 4, the Arbitrator awards Petitioner reasonable and necessary medical expenses totaling \$2,711.50, subject to the fee schedule. In accordance with the parties' stipulation, Respondent is entitled to Section 8(j) credit for the amounts its group carrier paid toward these awarded expenses, with Respondent holding Petitioner harmless against any claims made by the group carrier in connection with those payments.

Is Petitioner entitled to permanent partial disability benefits?

The medical records reflect that Petitioner sustained a "Jones type" proximal third fifth metatarsal fracture as a result of his accident. PX 2, p. 7. Dr. Vargo elected to treat the fracture conservatively, via a boot and crutches, but warned Petitioner there was a chance he would require surgery with screw fixation. PX 2, p. 7. The last treatment record in evidence, Dr. Vargo's note of February 11, 2013, reflects that the fracture was still not fully healed but that Petitioner was generally doing well. PX 3, p. 1. Petitioner credibly testified he experiences pain after standing at work all day and when walking on uneven surfaces. Petitioner also credibly testified he no longer performs student "take downs" since that would require him to run at top speed. Petitioner testified he applies ice to his foot from time to time and takes Ibuprofen as needed.

In Luttrell v. Thomas Pallet Rebuilders, 12 IWCC 877, the Commission (Donohoo, Lamborn and Tyrell) upheld an award of 20% loss of use of the foot in a case in which the claimant required surgery after sustaining a "Jones type" fifth metatarsal fracture that failed to heal with booting. In the instant case, healing occurred with mobilization and Petitioner ended up not needing surgery. The Arbitrator awards permanency equivalent to 15% loss of use of the right foot, or 25.05 weeks at the applicable weekly rate of \$712.55, under Section 8(e).

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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| <input type="checkbox"/> Affirm and adopt (no changes) | <input type="checkbox"/> Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> Affirm with changes | <input type="checkbox"/> Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> Reverse | <input type="checkbox"/> Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> Modify <input type="text" value="down"/> | <input type="checkbox"/> PTD/Fatal denied |
| | <input checked="" type="checkbox"/> None of the above |

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IBRAHIM M. RAMIREZ,

Petitioner,

14IWCC0302

vs.

NO: 12 WC 03817

CITY OF ROCK ISLAND POLICE DEPT.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of nature and extent, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner had been a Police Officer for Respondent for 8 years at the time of accident. On April 5, 2011 he conducted a traffic stop on an individual who was driving erratically. The individual attempted to flee, but eventually pulled over in an alley. Once out of his own car, Petitioner noticed the individual was out of his car as well. Petitioner noticed that the individual was highly intoxicated, and he immediately began a physical altercation with Petitioner. In wrestling the individual to the ground, Petitioner absorbed the body weight of the individual on his right shoulder. He fractured his shoulder and also suffered scrapes and bruises on his elbow.

14IWCC0302

2. The next morning, Petitioner presented at Trinity Medical Center and underwent x-rays and an MRI. That same day Petitioner visited Concentra and met with a Nurse Practitioner named Katie Murphy. She examined Petitioner, prescribed medication, recommended physical therapy and took him off of work.
3. After 2-3 therapy sessions Petitioner preferred to continue it at his home. He was given the requisite equipment. On April 11, 2011 a nurse named Sullivan released Petitioner back to work and terminated his therapy. However, Petitioner stated that his pain and limited range of motion were still present.
4. On May 12, 2011 Petitioner returned to Concentra complaining of a clicking sound in his right shoulder and swelling in his elbow. He was referred back to Practitioner Murphy on May 20th. An arthrogram MMR was performed on May 26th, which finally revealed that Petitioner had suffered a fractured shoulder.
5. On June 1, 2011 Dr. Mendel, an orthopedic specialist, performed a cortisone injection. This helped for a few months. Petitioner followed up on July 16, 2011, but was encouraged to do exercises and was released from care. Petitioner followed up again one year later on July 27, 2012. At that time his pain had returned.
6. Currently, Petitioner still has range of motion limitations, although his pain has somewhat subsided. He has difficulty raising his arm above 90 degrees, however. He is not experiencing any elbow difficulty. He is right-handed. He demonstrated his limited range of motion at trial.
7. Petitioner is back working full duty.

The Commission modifies the Arbitrator's ruling on nature and extent. The Commission views the evidence slightly different than the Arbitrator, and finds that, while Petitioner's injuries do command the 7.5% loss of a man as a whole award, they do not justify the 10% loss of use of his right arm award. Petitioner himself testified that he currently has no elbow difficulty, thus it cannot be said that the 10% loss of use award was awarded due to any elbow injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner is entitled to a 7.5% loss of a man as a whole award under §8(d)(2) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

14IWCC0302

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
O: 2/27/14
DLG/wde
45

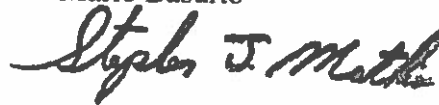
APR 28 2014



David L. Moore



Mario Basurto



Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RAMIREZ, IBRAHIM M

Employee/Petitioner

Case# **12WC003817**

14IWCC0302

ROCK ISLAND POLICE DEPT

Employer/Respondent

On 8/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2028 RIDGE & DOWNES LLC
JOHN MITCHELL
415 N E JEFFERSON AVE
PEORIA, IL 61603

2506 BETTY NEUMAN & McMAHON PLC
MARK WOOLLUMS
111 E THIRD ST SUITE 600
DAVENPORT, IA 52801

STATE OF ILLINOIS)
)SS.
COUNTY OF ROCK ISLAND)

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|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

14IWCC0302

Ibrahim M Ramirez
Employee/Petitioner
v.
Rock Island Police Department
Employer/Respondent

Case # 12WC 03817

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Rock Island**, on **6/11/2013**. By stipulation, the parties agree:

On the date of accident, **04/05/2011**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$54,080.00**, and the average weekly wage was **\$1,040.00**.

At the time of injury, Petitioner was **39** years of age, *married* with **3** children under 18.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$0.00** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$0.00**. Petitioner's salary continued.

14IWCC0302

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.


ORDER

Respondent shall pay Petitioner the sum of **\$624.00/week** for a further period of **62.8 weeks**, as provided in Section **8(e)** of the Act, because the injuries sustained caused **10% loss of use of the right arm and 7 1/2% loss of use of body as a whole.**

Respondent shall pay Petitioner compensation that has accrued from **4/5/2011** through **6/11/2013**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

7/31/13
Date

AUG 5 - 2013

STATE OF ILLINOIS)
COUNTY OF ROCK ISLAND) SS

14IWCC0302

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IBRAHAM RAMIREZ,)
)
Petitioner,)
)
v) IWCC: 12WC 03817
)
ROCK ISLAND POLICE DEPARTMENT,)
)
Respondent.)

FINDINGS OF FACTS APPLICABLE TO ALL ISSUES

Petitioner, a Rock Island Police Officer, late in the evening of April 5, 2011, chased down a speeder. The individual was intoxicated. When the driver exited his car an altercation ensued. During the course of the melee, the Petitioner and the violator fell to the pavement with the Petitioner and the violator both landing on Petitioner's right shoulder and elbow. The Petitioner is right handed. He has never had an injury to the right shoulder or arm prior to this occurrence.

He initially received conservative care from Concentra for what was diagnosed as a soft tissue injury. He did well in physical therapy initially and was discharged from care on April 11, 2011. However, he still had restriction of motion and pain in his shoulder.

Petitioner returned to Concentra and was sent for an MRI arthrogram. Thereafter, he was referred to an orthopedic surgeon, Dr. Tuvi Mendel. The diagnosis was that of a non-displaced fracture of the greater tuberosity of the right humerus and mild right shoulder impingement with mild insertional tendonopathy. A cortisone injection was administered which helped him for a couple of months. Petitioner was last seen by Dr. Mendel on July 27, 2012. He indicated that the treatment took away 70% or 80% of his complaints.

The Petitioner demonstrated with his left arm the motions that currently cause him pain in the right arm. Those motions involved raising the arm and abduction to

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horizontal but no further without pain. At the opposition of the arm at horizontal, bringing the arm forward towards his chest caused discomfort and pain. He tried throwing tennis balls to his dog and that caused pain. He, however, returned to work without restriction.

The Petitioner's credible recitation of his complaints and demonstration of his level of motion which generated complaints of pain, the Arbitrator concludes that he has sustained permanency to the degree as found based upon both the arm and the shoulder injury.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

| | |
|--|--|
| <input type="checkbox"/> Affirm and adopt (no changes) | <input type="checkbox"/> Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> Affirm with changes | <input type="checkbox"/> Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> Reverse | <input type="checkbox"/> Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> Modify <input type="text" value="down"/> | <input type="checkbox"/> PTD/Fatal denied |
| | <input checked="" type="checkbox"/> None of the above |

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Timothy Knop,

Petitioner,

14IWCC0303

vs.

NO: 09 WC 21676

State of Illinois,
Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, temporary total disability, medical expenses, and permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

- Petitioner is a 49 year old employee of Respondent, who described his job as a correctional officer, sergeant, lieutenant. Petitioner began working for Respondent in 1984 as a correctional officer and was promoted in about five years to sergeant and then to lieutenant (Lt) at just under 20 years. Petitioner is now retired (July 2011) from Respondent and not currently employed. Petitioner reviewed DVD's of the job of a correctional officer and other materials. Petitioner also reviewed the DVD regarding a correctional lieutenant. and the Job Site Analysis of a correctional officer and a Lt. Petitioner stated that he saw the DVD 3-4 times but it had been a couple years since he last viewed it. As to the duties of correctional officer, Petitioner testified that his

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impression was that the video was close but it was not an everyday scenario; he stated there is a lot more activity going on than just what that was shown on the video. He stated there is a lot more cell door opening, confrontations, checking doors, etc. As to frequency, he stated it does not show the full daily activity of a correctional officer. As to intensity/force, Petitioner stated it was more like a show than real life scenarios. Petitioner stated that as a correctional officer he rapped bars. Petitioner stated to do that you have a bar about a foot long that you rap that against the other bars on the doors. Petitioner testified that there are about 50-60 bars per cell and between 48-52 cells depending on the gallery. Petitioner stated that as a correctional officer he had to do that on a daily basis. Petitioner testified when he did that he experienced a great tingling sensation by the time he was at the end of the gallery as he would have hit the bars several hundred times by the time he was done. Petitioner testified as a correctional sergeant he rapped bars 2-3 times per week to show his staff what he meant by rapping bars. Petitioner testified that he experienced the same sensation. Petitioner testified that he rapped bars as a correctional lieutenant (Lt) the same way as officers do; he showed the officers the way he wanted the bars rapped. Although it was noted that the job site analysis indicated Lt's did not rap bars, Petitioner stated that it still did not show every day activities. He stated that was a show put on to inform people that do not understand what happens in a maximum security joint.

- Petitioner testified that as a correctional lieutenant he led by showing what he wanted done and how to do it. Petitioner stated that he was on the gallery every day. Petitioner stated that he checked out his own keys, opened cell doors and showed them how to check the doors, pull each shut, double check it. Petitioner stated that he relieved officers on the yards for lunch hours/breaks and when they were short staffed. He stated there was no one else to relieve them so the cell house lieutenant, Petitioner, did. He stated he stayed in the cell house, worked the galleries, and showed officers what he wanted them to do; he worked side by side with them. Petitioner indicated that he used Folger-Adams keys (large, 5-6 inch keys). Petitioner stated that to use them you are turning your whole wrist over and usually holding your thumb as the key has a big wing on it and that is where the pressure is to turn the keys. He stated there is a bar inside the door that pushed the lock up. He testified it requires force to use the keys and many doors you have to use both hands to open them up. Petitioner testified there are several times the doors and keys malfunction and you have to leave the door on deadlock and call the locksmith to take the door apart and try to repair it.
- Petitioner was asked about a crank officer. He stated that the crank officer goes to the end of the gallery, and opens a crank box which opens half of the gallery. He stated that the officer would be in contact via radio with the gallery officer, sergeant, or lieutenant whoever called it to be cranked. He stated that the officer would open the door and the crank falls down and it would open half the gallery at a time. He testified that this required use of the hands. He stated it is a cranking motion with the wrist and thumb to crank it open and then to crank it closed again. Petitioner stated it requires force and on occasion, if the lock would not hold up, use of both hands. Petitioner testified that he

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performed that activity as a sergeant and also as a lieutenant. Petitioner stated again that he viewed the Job Site analysis for a correctional officer and that the tasks of an officer and a sergeant are shown on the analysis. Petitioner indicated that the doors at Menard are all steel and physically have to be pulled open. Petitioner stated that required force and sometimes the use of both hands. Petitioner stated they are hard to pull open; sometimes stick, and lock because it is metal on metal. Petitioner stated that they are old and get rusty and do not slide very well at all. Petitioner testified he performed those duties daily as a correctional officer, sergeant, and lieutenant. Petitioner indicated it is not easy to open a lock in slow motion (like on the video); he stated most of them will stick and you want to twist extremely hard to make it. He stated if you turn slowly it will bind up. Petitioner testified that he personally turned the locks multiple times every day. He stated he showed his staff. He stated if he cannot do it then he cannot make his staff do it. Petitioner testified that he relieves officers when they are walking passes, on lunch and breaks. Petitioner stated that he relieved them on the gallery and did the exact same job as an officer; he stated that he believed that is the cell house lieutenant's job. Petitioner testified that they had to pull on doors to make sure they were locked down and shut. He testified that that required force with every cell door. Petitioner testified that in his career he had rapped bars tens of thousands of times, as well as turning keys and pulling on cell doors. Petitioner stated that he was doing it until the day he retired.

- Petitioner testified that lockdown meant that there would be no crank rolled. The cells are on deadlock and every cell has to be taken off deadlock (top lock), then the key inserted into the bottom lock to actually open the door and then the officer would have to pull the door open himself. Petitioner testified that when the facility is on deadlock the officers, sergeants, and Lt's will be instructed to do everything; feed the inmates, give them their trays, pick up the trash, deliver mail, pick up laundry, pass out laundry. Petitioner stated that at that time, there was absolutely no inmate help; the officers, sergeants, and Lt.'s did everything. Petitioner testified that the trays passed to the inmates are heavy. Petitioner stated that the trays are carried upstairs as there are no elevators there; the same for the laundry and trash, it has to be carried.
- Petitioner testified that when he was promoted to Lt. his duties changed in that he had greater responsibilities, but his every day activity did not change as to his elbows and wrist usage. Petitioner reviewed the testimony of Major Durham (a 24 year employee of Menards) for Respondent (PX18) and testified that he did agree with that testimony. Petitioner had the opportunity to review the decision from Taylor v. State of Illinois and noted the testimony of Major Durham in that decision. Petitioner stated he agreed with that testimony as well. Petitioner testified that in addition to the physical duties of a correctional lieutenant he also had to do more writing, and typing (computer usage) which required use of his wrists, hands and fingers. Petitioner testified he could not think of any part of his job that did not involve use of his hands and arms as it is a very hands-on job. Petitioner testified as an officer and a sergeant he had to cuff and un-cuff inmates; Petitioner stated that some cuffs operate smoothly and others are worn out and did not operate very well at all. As to cuffing, Petitioner testified that if the handcuffs are on

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deadlock you have to twist it all one way to unlock it, take the deadlock off, and then twist it in the opposite direction to actually uncuff it. Petitioner stated that he performed cuffing and uncuffing as a Lt. although that was not indicated in the job description. Petitioner explained that certain inmates were on deadlock or in their cells for basically not behaving. Petitioner stated that if the prison or cellblock is on deadlock, each inmate that comes out of their cell has to be cuffed. As a Lt., Petitioner stated they did not have the staff to just tell an officer or sergeant to cover all of that. Petitioner stated he is a cell house Lt. so he was going to be right there with his staff. Petitioner stated that a cell house Lt. works with staff controlling inmates in and out of their cells and as compared to a front gate Lt., or a yard Lt. who basically monitors line movement. Petitioner testified that he periodically relieved the other Lt. positions but 99% of his duties had been as a cell block Lt.

- Petitioner testified that over the course of performing his job duties he developed symptoms in his hands and arms. Petitioner stated that he did not realize it was happening as it was gradual, gradual aches and pains. Petitioner testified that after opening just 4-5 cells his thumb would get extremely numb and his wrist would start aching to where he would have to switch to using his left hand to key the cells or cuff. Petitioner stated that a lot of the cells did not open and he had to use both hands. Petitioner testified that prior to seeing Dr. Brown in April 2009 he never saw a doctor for problems with his hands or wrists. Petitioner's attorney sent him to Dr. Brown and Brown referred him to Dr. Phillips for diagnostics (EMG/NCV) of his hands. Petitioner stated that prior to that time that he never had or even heard of that test. Petitioner testified that was the first date that he understood that he had a work-related condition. Petitioner testified at that point he filled out the accident/incident report in the WC docket log (PX 9). Petitioner stated that he noted (in the incident report) that the duties he was performing at the time of the incident were, 'turning keys, running lines, laundry bags, and lunch trays. Petitioner indicated that after he filled out the report he received correspondence from the State saying he was approved for compensation. Petitioner testified that he reviewed an e-mail (PX11) from his attorney from Ms. Zellers. Petitioner stated that his understanding of that letter was that the State initially accepted him but then put him on hold and that was why he was told not to do it for a while.
- Petitioner testified that he ultimately did have surgery and that the surgery helped his condition considerably. Petitioner stated that since the surgeries he has movement, can grip and his hand does not fall asleep; some of the symptoms have been alleviated. Petitioner testified he still has occasional soreness and pain with increased activities. Petitioner stated he does perform activities with his arms and wrists. Petitioner stated that he retired from being a volunteer firefighter. Petitioner stated that when he was a fireman he had to pull hoses and when he did that his wrists would get very fatigued. Petitioner testified that now that he is retired he does enjoy bowling and golfing and he noticed it is now a lot more pleasurable; his hands/wrists do not hurt and his thumbs are not going numb from gripping anything. He testified that his night pain was completely gone. His activities, now that he is retired, involve golfing and bowling and he helps with a little

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construction and farming; just little activities to keep himself busy. Petitioner testified that in doing those activities his hands feel better in the beginning of the day, but with age and everything he gets worn out and his arms will tire out. Petitioner indicated that when he worked that was the problem doing the activities. Petitioner testified that his grip strength had increased since the surgeries. He stated before surgery he could not grip anything for a very long time at all. Petitioner testified that he did not have diabetes, gout, hypothyroidism or rheumatoid arthritis. Petitioner testified that his weight has been steady.

- Petitioner testified that he had never met Dr. Sudekum and would not know him if he walked in. Petitioner read the report and the deposition of Dr. Sudekum. Petitioner stated that he did not agree with Dr. Sudekum's report. Petitioner stated that he did not believe that Dr. Sudekum looked at it like an eight hour day; doing that constantly every day, eight hours a day. Petitioner testified that he was extremely happy with the medical care from Dr. Brown and Dr. Paletta. Petitioner stated that he reviewed the medical bills in PX 1 and the medical records (PX 3-PX 8) regarding his care. Petitioner testified that those were the records of his care and treatment in this case. Petitioner testified that his elbows are fine, they had never bothered him; it was just his wrists that have given him a problem.
- Petitioner indicated that he recognized Major Cowen (at hearing) who had been his supervisor. Petitioner testified that Major Cowen had been a correctional lieutenant, officer, and sergeant and that he had enjoyed working for him.
- Mr. Cowan testified for Respondent, he had been at Menard for 29 years. He had been a correctional officer for 8-9 years, promoted to sergeant for about 6 months and then promoted to lieutenant and was for about 10 years. Witness testified that he was then a captain for about 3 years and when that position was eliminated he went back to lieutenant for another 4 years. He testified as correctional officer, sergeant, Lt., captain, and major he worked in the cell houses, primarily North II. He was familiar with the other cell houses and uppers and lowers. Mr. Cowan testified he was familiar with the job duties of a correctional officer at Menard, as well as the job duties of a sergeant and a Lt. Mr. Cowan testified the duty of a Lt. is primarily supervision of line staff and the inmates in the assigned area. Mr. Cowan reviewed the Job Site Analysis (RX 4) and testified in his opinion it showed the job duties of a Lt. He heard Petitioner's testimony and agreed the Lt. supervised the correctional officers. He agreed there are occasions the Lt. may have to do some of the correctional officer duties. He testified that was periodic; the Lts would choose to do it, they were not bound to do it. He testified that bar rapping was not normally done by Lt's. Mr. Cowan testified a Lt. on the 7-3 shift supervises the staff and inmates, makes sure time schedules coordinate on a movement, makes sure the staff and inmates follow procedures. Mr. Cowan testified that normally meal breaks are provided, but certain times the supervisors will chip in and help out. They would have to relieve an officer to let them off the gallery.

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- Mr. Cowan testified when the institution is on lockdown the duties of correctional lieutenant changes somewhat, depending on the level of the lockdown. In a level I lockdown they have to provide more of the service that the inmate workers would provide; deliver food, pick up laundry, tasks that are generally done by line staff/correctional officers. A Lt. is not considered line staff. A Lt. could help out if needed. Mr. Cowan testified a Lt. is usually with the staff in the cell house, on the gallery or outside. He testified that normally an officer will cuff and un-cuff inmates but there would be occasions that a lieutenant would do that but not nearly as much as the officers do. Mr. Cowan testified that he agreed with the job analysis that 80% of a correctional lieutenant time is supervision, but the demands are walking, observing, mentally processing information, making decisions, and prompting staff in critical emergency situations. He agreed that a Lt. would often, in line movement, discuss with inmates problems they may have; that helps with resolving problems in the cell house. He agreed with the Lt. job analysis that gross hand manipulation, grasping, and twisting is required 2-4 hours per day. He indicated that normally the crank officer or sergeant turns the cranks on the lines. He testified the lieutenant does not do it nearly as much as the others (depends on the particular cell house set up), but normally it is done by an officer or sergeant.

The Commission finds that Petitioner's testimony is essentially not rebutted. The evidence in this record finds a pretty consistent history of Petitioner's daily hand intensive, repetitive activities through his duties as an officer, sergeant, and lieutenant. Respondent's witness while indicating that a Lt. is a supervisory position, acknowledged that they can and do the duties along side of the correctional officers as Petitioner described. The DVD is of such a limited and directed fashion that it does not appear to reflect in any way what would be considered done regularly. Respondent's Dr. Sudekum found no causal relationship to even an aggravation of the CTS. Dr. Sudekum's view is partially based on the limited view DVD and job analysis but does not consider any of Petitioner's history of essentially doing the same duties as a correctional officer (his report was only a records review). Dr. Sudekum's view is clearly biased with his many IME's and records reviews for Respondent. Dr. Brown and Dr. Paletta both treated Petitioner with Paletta eventually performing the surgery. Drs. Brown and Paletta are both known for their expertise with both even taking care of the players for the St. Louis Cardinals. The opinions of the treating doctors clearly express a more detailed and fact based opinion. Also Dr. Brown sees very few State employee workers compensation patients since 2010-2011 when the State started denying repetitive trauma cases. The evidence and testimony finds that Petitioner met the burden of proving accident that arose out of and in the course of employment with his repetitive, forceful, hand intensive duties over his 25 year employment. Petitioner met the burden of proving causal connection to at least an aggravation/acceleration due to his hand intensive work duties from officer through lieutenant. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence and herein, affirms and adopts the Arbitrator's finding of accident and causal connection.



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The Commission finds that the evidence and testimony proves that Petitioner became aware, then knew, or should have known, his condition was related to his work activities in April 2009 when he first sought medical treatment for the pain, tingling, and numbness in his hands and was diagnosed with carpal tunnel syndrome (CTS). Clearly the thumb arthritis is not shown to be related. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence and herein, affirms and adopts the Arbitrator's finding of timely notice.

The Commission finds regarding the issue of temporary total disability (TTD), that the issue is moot regardless of the other findings as Petitioner continued to work until he retired and did not have surgery until after retirement so no TTD would be at issue in any event. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence, and herein, affirms and adopts the Arbitrator's finding as to no total temporary disability award.

The Commission finds regarding the issue of medical expenses that the evidence and testimony proves that the treatment had been reasonable and necessary, particularly given the fact that Petitioner had great improvement bilaterally post surgery. The evidence and testimony finds Petitioner met the burden of proving entitlement to the medical expenses as awarded. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence, and herein, affirms and adopts the Arbitrator's finding as to medical expenses.

The Commission further finds, with the findings on the issues above in addition to Petitioner's somewhat limited current complaints of ill-being, that the award regarding Petitioner's dominant right hand is clearly consistent with prior Commission decisions and the current state of the law on such cases. The Commission, however, finds that the permanent partial disability (PPD) award regarding the non-dominant, left hand to be excessive as the Commission views the evidence differently with the very limited left hand complaints which warrants a reduction in the award to 10% loss of the left hand. The evidence and testimony, finds Petitioner met the burden of proving entitlement to a PPD award. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence as to the dominant right hand, and herein, affirms and adopts the Arbitrator's finding as to Permanent partial disability of the right hand of 15% loss of use; further, herein, the Commission modifies the PPD award to the non-dominant left hand to a loss of 10% loss of use.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$664.72 per week for a period of 51.25 total weeks, as provided in §8(e)(9) of the Act, for the reason that the injuries sustained caused the loss of use of 15% of the dominant right hand (30.75 weeks) and the loss of use of 10% of the non-dominant left hand (20.5 weeks).

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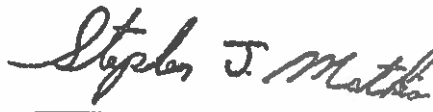
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of the reasonable and necessary medical services as identified in PX 1, for medical expenses under §8(a) of the Act and subject to the fee schedule. Respondent shall be given credit of amounts paid for medical expenses and Respondent shall hold Petitioner harmless from any claims of providers for which Respondent is receiving credit under §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: APR 28 2014
o-2/27/14
DLG/jsf
45


David L. Gore


Stephen Mathis


Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KNOP, TIMOTHY

Employee/Petitioner

Case# **09WC021676**

14IWCC0303

SOI/MENARD CORRECTIONAL CENTER

Employer/Respondent

On 8/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
KENTON J OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305 / 14

AUG 15 2013




KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

141WCC0303

Timothy Knop
Employee/Petitioner

Case # 09 WC 21676

v.

Consolidated cases: n/a

State of Illinois/Menard Correctional Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on June 13, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

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FINDINGS

On April 27, 2009, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned \$74,856.08; the average weekly wage was \$1,439.54.

On the date of accident, Petitioner was 49 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

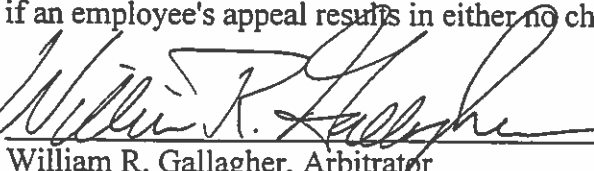
ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability of \$664.72 per week for 61.5 weeks because the injuries sustained caused the 15% loss of use of the right hand and the 15% loss of use of the left hand as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


William R. Gallagher, Arbitrator
ICArbDec p. 2

August 12, 2013

Date

AUG 15 2013

This case was tried in Herrin on June 13, 2013. At that time, counsel for both Petitioner and Respondent tendered into evidence various exhibits and, at the conclusion of the trial, both Petitioner and Respondent rested and the Arbitrator closed the record in the case.

Shortly after the trial of the case, Petitioner's counsel filed an emergency motion to reopen proofs for the sole purpose of admitting the previously taken deposition of Dr. David Brown. Dr. Brown was deposed on May 14, 2013, approximately one month prior to the trial and, at the time of the trial, the transcript of his deposition testimony had not been prepared. Petitioner's counsel did not make a motion at the time of trial to leave the record open to submit this deposition transcript into evidence.

Respondent's counsel opposed Petitioner's motion to reopen proofs and a hearing regarding this motion occurred on July 16, 2013, in Collinsville. At that time, Petitioner's counsel stated that the court reporter had not prepared the deposition transcript until the same date of the trial, June 13, 2013. Petitioner's motion had an Affidavit from the court reporter attesting to that fact. Petitioner's counsel acknowledged that he did not make a motion to keep the record open at the time of the trial and stated it was merely an oversight.

Respondent counsel's position was that the record was closed and that no motion had been made by Petitioner's counsel to keep the record open. Further, Respondent's counsel referred to a motion made by his office in the case of Craig Mitchell v. State of Illinois/Menard Correctional Center, 12 WC 35386, in which he made a motion to supplement the record with a set of medical records that he did not have at the time the case was tried. This motion was denied by the Arbitrator. A copy of the motion filed by Respondent's counsel in that matter was tendered and it noted that the case was tried on March 12, 2013, Respondent had tendered a subpoena to Dr. Jay Pickett on March 8, 2013, for medical records. The medical records were received by Respondent's counsel on March 18, 2013.

Petitioner's counsel argued that there was a distinction between the two factual situations. In the Mitchell case, Petitioner did not have the opportunity to review the records and testify regarding any statements contained therein. In the instant case, Respondent's counsel was well aware of the fact that Dr. Brown had been deposed and he cross-examined Dr. Brown at the time of the deposition.

After hearing the oral argument of both counsel for Petitioner and Respondent, the Arbitrator granted Petitioner's motion and received the deposition testimony of Dr. Brown into evidence. In making this ruling, the Arbitrator stated that the granting of this motion did not prejudice the right of the Respondent because Respondent's counsel was present when Dr. Brown was deposed and Respondent's counsel conducted a lengthy cross-examination of Dr. Brown.

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of April 27, 2009, and that Petitioner sustained repetitive trauma to his right and left hands and right and left wrist. Respondent

disputed liability on the basis of accident, notice and causal relationship. Petitioner sought a final award in this case.

Petitioner worked for Respondent from 1984 to when he retired in July, 2011. Petitioner worked as a Correctional Officer from 1984 to 1989 when he was promoted to Correctional Sergeant. He served as a Correctional Sergeant from 1989 to 1993 when he was promoted to Correctional Lieutenant. Petitioner then worked in that capacity until the time he retired in July, 2011.

Petitioner testified that as a Correctional Officer, Correctional Sergeant and Correctional Lieutenant, he performed various duties that required the repetitive use of his arms and hands. This included bar rapping which involved the repetitive striking of a steel bar against metal bars which caused a numb/tingling sensation in his hands and arms. Petitioner also used Folger-Adams keys to open steel doors which many times required the use of both hands. Petitioner testified that these keys were many times difficult to operate, that force was required and that the locks would either stick or malfunction in some way. The doors were difficult to open and required the use of both hands to both open and close. Petitioner was also required to operate the "crank box" which is a device that opens 24 cell doors at one time. The cranking motion required the use of both hands and the forceful use of the wrist and thumbs.

When the facility was on lockdown, Petitioner's job duties increased because he and the other officers there had to perform tasks that the inmates did such as collecting food trays, disposing of trash, laundry, etc. Even though Petitioner was promoted to both Sergeant and Lieutenant, he testified that this did not result in any appreciable difference in regard to the repetitive use of his hands and arms. At trial, Petitioner's counsel tendered into evidence a transcript of the testimony of Major Joseph Durham in the case of Taylor v. State of Illinois, 11 WC 04798. Major Durham worked at Menard Correctional Center for 24 years and served as a Correctional Officer, Correctional Sergeant, Correctional Lieutenant and Correctional Major. He testified that the job tasks performed by all of the ranks were both repetitive and strenuous.

Petitioner tendered into evidence a "Demands of the Job" and "Job Site Analysis" for a Correctional Officer at Menard Correctional Center, both of which were prepared by the Respondent. Both of these described repetitive use of the arms/hands that was consistent with Petitioner's testimony. Petitioner also tendered into evidence a DVD depicting the actions of a Correctional Officer at Menard Correctional Center which showed a variety of tasks including bar rapping, opening/closing doors, use of Folger-Adams keys, opening/closing chuckholes, turning gallery cranks, etc. Petitioner testified that he watched the DVD and it did not show the frequency or intensity of these activities performed by the Correctional Officers.

Respondent tendered into evidence a "Demands of the Job" form and a DVD regarding the job duties of a Correctional Lieutenant. The DVD depicted a Correctional Lieutenant as performing mainly supervisory tasks and only showed the infrequent use of the hands/arms as compared to a Correctional Officer. Petitioner testified that it was his practice to work side-by-side with the Correctional Sergeants and Correctional Officers working under his supervision so that he could show them the proper way to do things and to lead by example.

Over a period of time, Petitioner developed symptoms of numbness and tingling in both of his arms and hands. On April 27, 2009, Petitioner was seen by Dr. David Brown, an orthopedic surgeon. At that time, Petitioner informed Dr. Brown that he began developing numbness and

tingling in both hands approximately one year prior. He also informed Dr. Brown of his use of Folger-Adams keys, locking/unlocking cells, carrying trash, trays and laundry, etc. Dr. Brown's findings on clinical examination were benign; however, Dr. Brown opined that Petitioner had symptoms consistent with carpal tunnel syndrome. He referred Petitioner to Dr. Dan Phillips for nerve conduction studies and opined that Petitioner's job duties for Respondent would be a contributing factor in the development of carpal tunnel syndrome.

On April 27, 2009, Petitioner had nerve conduction studies performed by Dr. Dan Phillips. The study was not described as being impressive for right carpal tunnel syndrome and revealed a very mild median sensory neuropathy on the left side. After Petitioner received his diagnosis from Dr. Brown, he returned to work and filled out and signed a "Workers' Compensation Employee's Notice of Injury" dated May 15, 2009, which stated Petitioner had sustained injuries to his left and right wrist as result of turning keys, running lines, moving laundry bags and carts trays/racks. Petitioner testified that April 27, 2009, was the first time he was aware of having a work-related condition.

Petitioner was seen by Dr. Brown on June 8, 2009, and Dr. Brown reviewed the findings of the nerve conduction studies with them. Again, findings on clinical examination were benign and Dr. Brown recommended Petitioner take some medication and return to him on an as needed basis. Petitioner was subsequently seen by Dr. Brown over one year later, on July 26, 2010, and Petitioner stated that he had noted increased numbness since his last visit. Again the findings on examination were benign and Dr. Brown recommended Petitioner undergo repeat nerve conduction studies. On July 26, 2010, Dr. Phillips performed nerve conduction studies for the second time and the study revealed a mild-moderate median neuropathy across the carpal tunnel bilaterally. There was also a finding of a mild ulnar neuropathy across the left elbow. Dr. Brown saw Petitioner on July 28, 2010, and recommended continued conservative care with night time splitting and medication. When Dr. Brown saw Petitioner on September 13, 2010, he reported no improvement in his condition and symptoms. Dr. Brown opined that Petitioner had chronic bilateral carpal tunnel syndrome that failed conservative treatment. He recommended that Petitioner undergo surgery.

Because of another health issue, Petitioner deferred getting surgery and when he was seen by Dr. Brown on February 7, 2011, Dr. Brown restated his surgical recommendation; however, by that time Respondent had made a decision to deny the claim. Because Dr. Brown did not take Petitioner's group health insurance, he referred Petitioner to Dr. George Paletta, an orthopedic surgeon associated with him. Dr. Paletta saw Petitioner on August 29, 2011, (shortly after Petitioner retired) and Petitioner provided Dr. Paletta with essentially the same work history that he had previously provided to Dr. Brown. Dr. Paletta examined Petitioner and reviewed both Dr. Brown's medical records and the reports of the nerve conduction studies. Dr. Paletta also opined that Petitioner had chronic bilateral carpal tunnel syndrome and that surgery was appropriate. He also opined that Petitioner's condition was related to his work activities. Dr. Paletta performed carpal tunnel surgical releases on the right and left wrist on August 23, and September 22, 2011, respectively.

Dr. Anthony Sudekum reviewed Petitioner's medical treatment records through February, 2011 (Petitioner's last visit with Dr. Brown), the "Job Site Analysis", "Demands of the Job" and DVD of the duties of a Correctional Lieutenant. Dr. Sudekum opined that Petitioner's job duties did not cause or aggravate the bilateral carpal tunnel syndrome. Dr. Sudekum was deposed on May 24,

2012, and his deposition testimony was received into evidence at trial. When he testified, Dr. Sudekum reaffirmed his opinion that Petitioner's job duties as a Correctional Lieutenant did not cause or aggravate the carpal tunnel syndrome. However, Dr. Sudekum agreed that if the duties of a Correctional Lieutenant and a Correctional Officer were the same or similar, that the job duties would play a role in the development of a bilateral compressive neuropathy.

Dr. Brown was deposed on May 14, 2013, and, as is noted herein, his deposition testimony was received into evidence when the Arbitrator granted Petitioner's motion on July 16, 2013. Dr. Brown's testimony was consistent with his medical records and he reaffirmed his opinion that Petitioner's bilateral carpal tunnel syndrome was related to his work activities. When he was deposed, Dr. Brown testified that he had reviewed Dr. Sudekum's report and he disagreed with his conclusion as to the etiology of Petitioner's condition.

Petitioner testified that his condition improved following the surgery but he still has some symptoms depending on his level of activity, in particular, loss of strength and grip when performing household tasks. Even though Petitioner is retired, he still works as a volunteer firefighter and has some difficulties when pulling on heavy fire hoses.

Major Joseph Collins testified on behalf of the Respondent. Collins testified that he has worked for Respondent for 29 years and that he was familiar with the job duties of both a Correctional Sergeant and Correctional Lieutenant. Collins testified that a Correctional Lieutenant would generally supervise the Correctional Officers and would do very little bar rapping. Major Collins was present during all of Petitioner's testimony and, when cross-examined, he stated that he did not have any particular issue or dispute with Petitioner's description of his work duties.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to both of his upper extremities arising out of and in the course of his employment with Respondent that manifested itself on April 27, 2009, and that his current condition of ill-being in regard to his upper extremities is causally related to same.

In support of this conclusion the Arbitrator notes the following:

The Petitioner credibly testified about the repetitive use of his arms and hands as a Correctional Officer, Correctional Sergeant and Correctional Lieutenant. While Petitioner was promoted, this did not result in any appreciable change in the repetitive use of his arms and hands. This was corroborated by the testimony of Major Joseph Dunham whose testimony from the case of Taylor v. State of Illinois was tendered into evidence at trial. Further, Respondent's witness, Major Collins, testified that he did not have any particular issue or dispute with Petitioner's description of his work duties.

The Arbitrator notes that both of Petitioner's treating physicians, Dr. Brown and Dr. Paletta, opined that Petitioner's condition of ill-being was causally related to his work activities. While Dr. Sudekum opined that the duties of a Correctional Lieutenant did not cause the carpal tunnel

syndrome, he did agree that if the duties of a Correctional Lieutenant were the same or similar to that of a Correctional Officer, that his opinion in respect to causality would be different.

In regard to disputed issue (E) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner gave notice to Respondent within the time prescribed by the Act.

In support of this conclusion the Arbitrator notes the following:

Petitioner first became aware that he had a work-related condition on April 27, 2009, and he provided notice to Respondent on May 14, 2009, which is within the time limit for providing notice as prescribed in the Act.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

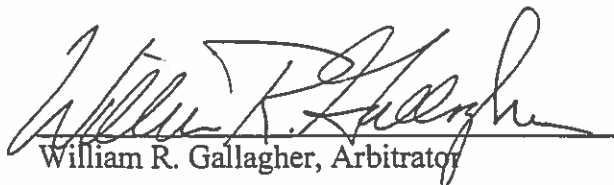
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 15% loss of use of the right hand and 15% loss of use of the left hand.

In support of this conclusion the Arbitrator notes the following:

Petitioner had bilateral carpal tunnel syndrome which required surgical releases. Petitioner's condition improved following the surgeries; however, Petitioner still experiences a loss of grip and strength especially when performing household tasks. Further, although he has retired Petitioner continues to work as a volunteer firefighter and has experienced difficulties when pulling on heavy fire hoses.



William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
 COUNTY OF LA SALLE)

| | |
|--|--|
| <input type="checkbox"/> Affirm and adopt (no changes) | <input type="checkbox"/> Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> Affirm with changes | <input type="checkbox"/> Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> Reverse | <input type="checkbox"/> Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> Modify | <input type="checkbox"/> PTD/Fatal denied |
| | <input checked="" type="checkbox"/> None of the above |

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Kane,

Petitioner,

vs.

No. 09WC048862

14IWCC0304

Arcelor Mittal Steel,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given to all parties, the Commission, after considering the issues of benefit rates, wage calculations, causal connection, medical expenses, permanent disability, "Failure to rule on 19(f)" and "8(d)1," and being advised of the facts and law, modifies the decision of the Arbitrator as stated below, and otherwise affirms and adopts the decision of the Arbitrator which is attached hereto and made a part hereof.

The Arbitrator found that the work-related injury Petitioner sustained caused permanent partial disability to the extent of 50 percent of the person as a whole. The Commission views the evidence as to permanency differently, and finds that Petitioner's right shoulder injury caused permanent partial disability to the extent of 35 percent of the person as a whole.

In its brief, Respondent acknowledges that "petitioner has sustained a loss associated with his right arm as a result of the loss and has been given permanent restrictions by the treating physicians." However, Respondent asserts that Petitioner failed to prove his entitlement to wage differential benefits. The Commission agrees, and finds that Petitioner failed to prove he is entitled to a wage differential award pursuant to section 8(d)(1) of the Act.

In order to qualify for a wage differential award under section 8(d)(1), a claimant must prove: (1) a partial incapacity which prevents him from pursuing his "usual and customary line of employment;" and (2) an impairment in earnings. 820 ILCS 305/8(d)(1); *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721, 730, 734 N.E.2d 482, 489 (3d Dist. 2000).

In regards to the first requirement, the Commission finds that Petitioner presented ample evidence to prove he is partially incapacitated and unable to return to his "usual and customary line of employment" as an electrician. Dr. Mitchell released Petitioner to work with permanent right arm restrictions of occasional above-the-shoulder lifting up to 7 pounds, occasional desk to chair lifting up to 24 pounds, occasional carrying up to 52 pounds and no ladder climbing, based on the May 18, 2009, Functional Capacity Evaluation (FCE). Petitioner's job description shows that occasional lifting and carrying up to 50 pounds, occasional stair and ladder climbing, and occasional working at heights are requirements of his position. The Commission finds that based on the FCE and Petitioner's job description, Petitioner is unable to perform the usual and customary job duties of an electrician for Respondent. The Commission notes that it is unclear whether the September 2009 job offer fell within Petitioner's work restrictions in light of Ms. Wagner and Petitioner's testimonies about the nature and location of the work. The Commission also notes that voluntary retirement does not preclude a wage differential award. See *Wood Dale Electric v. Illinois Workers Compensation Comm'n*, 2013 IL App (1st), 113394WC, ¶¶ 21-22, 986 N.E.2d 107, 113-114 (2013).

With respect to the second requirement, the Commission finds that Petitioner failed to prove an impairment in earnings. Mr. Pagella's opinion that Petitioner could earn only \$10.00 per hour in an unskilled job is not sufficient to prove an impairment of earnings. Ms. Bose opined that Petitioner could obtain other electrical types of positions, such as that of an electrical inspector, electrical subcontracting clerk, and a shop electrician. Neither Petitioner nor Mr. Pagella testified as to whether Petitioner could obtain other electrical jobs such as those suggested by Ms. Bose. In addition, Petitioner's testimony about his job search was vague and he did not provide details about the types of positions for which he applied. Finally, there is no Labor Market Survey on which the Commission may rely to assess whether Petitioner can obtain other electrical work and how much he is capable of earning in light of his occupational skills.

In its brief, Respondent also contends that based on *Gallianetti*, Petitioner is not entitled to a permanency award under any section of the Act because he failed to prove entitlement to a section 8(d)(1) award and "did not specifically request benefits under Section 8(d)(2)." The Commission finds that Respondent's argument is unpersuasive and misplaced. Prior to *Gallianetti*, the appellate court in *Freeman United Coal Mining Co. v. The Industrial Comm'n (Louis Selmo)*, 283 Ill. App. 3d 785, 670 N.E.2d 1122 (5th Dist. 1996), found that a claimant's failure to present evidence proving his entitlement to a wage differential award demonstrated that the claimant "chose not to prove up a wage-differential award, thereby electing to waive such award and proceed under the provision authorizing a percentage-of-the-person-as-a-whole award." *Freeman United*, 283 Ill. App. 3d at 791. Neither *Gallianetti* nor other subsequent case law has overturned *Freeman United*. Turning to the case at bar, the Commission finds that Petitioner's failure to prove entitlement to a wage differential award pursuant to section 8(d)(1),

constituted a waiver of benefits under section 8(d)(1) and an election to pursue a permanency award under section 8(d)(2).

Lastly, the Commission notes that neither party raised the issues of benefit rates, wage calculations, medical expenses or "Failure to rule on 19(f)" in their briefs. A review of the record shows that there is no basis for disputing the same issues.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on November 28, 2012, is hereby modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of \$593.40 per week for a period of 175 weeks, as provided in §8(d)2 of the Act, because the injuries sustained caused permanent partial disability equivalent to 35 percent loss of the person as a whole.

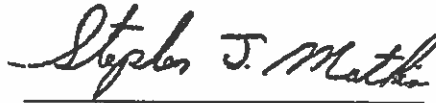
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

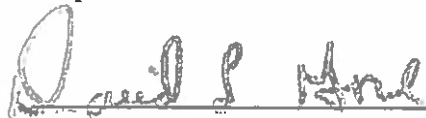
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

APR 29 2014

DATED:
SM/db
o-02/27/14
44



Stephen J. Mathis



David L. Gore



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

KANE, MICHAEL

Employee/Petitioner

Case# 09WC048862

ARCELOR MITTAL STEEL

Employer/Respondent

14IWCC0304

On 11/28/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0190 LAW OFFICES OF PETER F FERRACUTI
JENNIFER L KIESEWETTER
110 E MAIN ST
OTTAWA, IL 61350

1872 SPIEGEL & CAHILL PC
MILES P CAHILL
15 SPINNING WHEEL RD SUITE 107
HINSDALE, IL 60521

14IWCC0304

STATE OF ILLINOIS)
)SS.
COUNTY OF LASALLE)

| | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

MICHAEL KANE
Employee/Petitioner

Case # 09 WC 48862

v.

Consolidated cases: _____

ARCELOR MITTAL STEEL
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, Arbitrator of the Commission, in the city of **Ottawa**, on **July 2, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On 6/14/08, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$51,428.00; the average weekly wage was \$989.00.

On the date of accident, Petitioner was 57 years of age, *married* with 1 children under 18.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

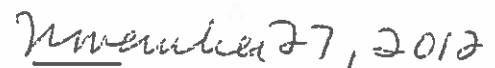
Respondent shall pay Petitioner permanent partial disability benefits of 50% of a personas a whole pursuant to Section 8(d)(2) of the Act at a rate of \$593.40 for 250 weeks.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator



Date

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

| | | |
|---------------------------|---|----------------------|
| MICHAEL KANE |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. 09 WC 48862 |
| |) | |
| ARCELOR MITTAL - HENNEPIN |) | |
| |) | |
| Respondent. |) | |

In support of the arbitrator's decision relating to **causal connection** the arbitrator finds the following facts:

The petitioner in this matter had previously testified in the 19(b) petition which was the subject of a petition review before the Commission. Based upon the principles of res judicata as well as a review of the medical records introduced in this matter the arbitrator finds that petitioner's current condition of ill-being is causally related to the accident of June 14, 2008.

In support of the arbitrator's decision relating to **wage differential benefits and nature and extent** of the injury the arbitrator finds the following facts.

The petitioner in this cause had previously testified in his 19(b) hearing relating to his need for restrictions and the change in his work status. In his previous 19(b) petitioner had

specifically testified concerning his pursuit of work activity and indicated he had looked for work locally because he did not want to move from his home area. In his previous petition the petitioner had prayed for maintenance benefits from the time from his layoff after the plant closing up to the time of trial. The Commission specifically noted petitioner would not be entitled to maintenance benefits noting that his testimony was vague and also noting the petitioner's failure to introduce any documentation substantiating a diligent job search. In the decision the Commission specifically found that the petitioner failed to meet his burden concerning a diligent self-directed job search that would entitle him to maintenance benefits. (See Decision of Commission dated April 15, 2011)

Subsequent to the trial of June 28, 2010, the petitioner has allegedly attempted to return to work in some capacity; however, his testimony in this present hearing was as or more vague than the testimony presented at the time of the first hearing. The petitioner did not provide any documentary evidence concerning his pursuit of work activities or any evidence concerning his effort to return to work. The arbitrator finds that the lack of evidence concerning the petitioner's pursuit of work activities precludes a finding of a wage differential based on the lack of any competent evidence concerning what wage the petitioner could have claimed in the terms of other suitable employment.

The arbitrator further notes that the respondent in this matter had requested that Julie Bose, a vocational rehabilitation expert contact the petitioner in order to provide a program for vocational assistance. Ms. Bose testified via deposition concerning the effort to contact the petitioner's counsel in order to schedule an evaluation. According to Ms. Bose' testimony the petitioner's attorney refused to allow a vocational interview. Ms. Bose testified that the petitioner's counsel refused to meet with her because the petitioner was not receiving maintenance benefits. Ms. Bose further testified that Mr. Kane had the option of returning to work with the Mittal organization if he was willing to transfer within the organization. Ms. Bose indicated that transfers of that type in an attempt to place someone within a company would be consistent with the principles of vocational rehabilitation and that Mr. Kane's failure or refusal to complete an application for transfer impacted the ability to limit any wage loss. However even given this fact, the nearest Respondent facility that Petitioner could have returned to work at was over 100 miles from Petitioner's home.

Ms. Bose also testified that the conduct of the attorney from Mr. Feracutti's office in disallowing the ability of Mr. Kane to participate in vocational rehabilitation prohibited her from being able to further provide vocational assistance in order to find alternative work for the petitioner that would have mitigated the impact of the work injury. Ms. Bose specifically indicated as an expert that if the petitioner had participated in the application process and attempted to return to work that the petitioner could have returned to work if he had a desire

to do so. This finding is consistent with the petitioner's completion of paperwork in this matter with his retirement benefit program in which he specifically indicated that he did not intend to return to work during his retirement in his application for retirement.

It is axiomatic that a decision of the Commission must rely on facts and cannot be based on speculation and conjecture. The finding of a wage differential award in this matter would require a showing of the wages that a petitioner could have earned in full performance of his work duties less the wages that he would be able to earn in other suitable employment. In this instance petitioner has failed to provide any evidence of earnings that he would have had a full performance of his former duties, failed to cooperate with an offer of vocational rehabilitation assistance, failed to diligently pursue work within his purported restrictions, and has specifically indicated in his retirement paperwork that he intended not to return to work after his retirement. Based upon the foregoing it would be mere speculation and conjecture to presume what the petitioner's earnings would have been in other suitable employment. Accordingly, the arbitrator finds that an award of wage differential benefits would not be appropriate.

The petitioner has sustained a significant loss associated with his right arm as a result of the loss and has been given permanent restrictions by the treating physicians. The arbitrator finds that the petitioner had sustained a loss associated with his injury and that the loss does

require some element of restrictions. The Arbitrator finds that per the clear testimony of both vocational rehab counselors Petitioner could not have returned to work as an electrician. Based on the record as a whole, the Arbitrator finds that Petitioner has sustained a loss of occupation. Accordingly, the arbitrator finds that the petitioner has sustained a loss to the person payable under Section 8(d)(2) rather than a specific loss associated with the right arm and shoulder or under Section 8(d)(1). The arbitrator finds that petitioner has sustained a loss to the extent of 50% loss of use of a person as whole 250 weeks of compensation and a benefit rate of \$593.40 per week.

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| <input type="checkbox"/> Affirm and adopt (no changes) | <input type="checkbox"/> Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> Affirm with changes | <input type="checkbox"/> Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> Reverse | <input type="checkbox"/> Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> Modify | <input type="checkbox"/> PTD/Fatal denied |
| | <input checked="" type="checkbox"/> None of the above |

Norma Ruiz,

Petitioner,

vs.

No. 08WC041154

Nuevo Leon Restaurant,

Respondent.

14IWCC0305

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of the duration of temporary disability, the nature and extent of Petitioner's disability, penalties pursuant to sections 19(l) and 19(k), and attorney fees pursuant to section 16, and being advised of the facts and law, modifies and corrects the decision of the Arbitrator as stated below, and otherwise affirms and adopts the decision of the Arbitrator which is attached hereto and made a part hereof.

The Arbitrator found that the work-related injuries Petitioner sustained caused permanent partial disability to the extent of 60 percent of the person as a whole. The Commission views the evidence as to permanency differently, and finds that Petitioner's injuries caused permanent partial disability to the extent of 20 percent of the person as a whole.

In addition, the Arbitrator awarded penalties pursuant to sections 19(l) and 19(k) as well as attorney fees pursuant to section 16. After reviewing the evidence, the Commission concludes that Respondent's failure to pay benefits after February 24, 2010, was not deliberate, vexatious, or frivolous, and did not result from bad faith or improper purpose. As such, the Commission declines to award penalties pursuant to section 19(k) and attorney fees pursuant to section 16. The Commission affirms the Arbitrator's award of penalties pursuant to section 19(l).

With respect to corrections, the Commission notes that the second period of temporary total disability is from October 30, 2009, through February 24, 2010, as stipulated by the parties on the Request For Hearing form. The Commission also notes that the second period of temporary partial disability is from December 6, 2010, through December 24, 2010, as shown in Petitioner's Exhibit One, the wage records from Scelebrations.

Lastly, the Commission elects to decide Respondent's October 2, 2013, motion to strike Petitioner's response brief with the issues on review. The Commission notes that while Petitioner acknowledges she filed her response brief nine days late according to the time limits established in section 7040.70 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission, the rules do not provide for the sanction of striking a brief. In addition, the Commission finds that *Shannon v. Industrial Comm'n*, 160 Ill. App. 3d 520, 513 N.E.2d 525 (4th Dist. 1987) is instructive. In *Shannon*, the appellate court found that a party's one-day delay in filing a statement of exceptions and supporting brief did not burden or prejudice any party, including the Commission. The court reasoned that the Commission's rationale for the rule, which was to avoid unreasonable and unnecessary burdens upon the high-volume work of the Commission as well as other parties and to allow an opposing party the opportunity to meaningfully respond to the issues, was not served by rendering such a harsh result. *Shannon*, 160 Ill. App. 3d at 523. In the instant case, Respondent has failed to allege prejudice when it timely filed its statement of exceptions and brief before Petitioner's response brief was due. Applying the reasons set forth in *Shannon*, the Commission denies Respondent's motion to strike Petitioner's response brief.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on March 13, 2013, is hereby modified and corrected as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary partial disability benefits of \$256.67 per week for 6-3/7 weeks, from October 4, 2010, through October 29, 2010, and from December 6, 2010, through December 24, 2010; and additional temporary partial disability benefits of \$359.35 per week for 2/7 weeks, from December 27, 2010, through December 28, 2010, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of \$366.67 per week for 129-1/7 weeks, from August 19, 2008, through January 5, 2009; October 30, 2009, through February 24, 2010; February 25, 2010, through October 3, 2010; October 30, 2010, through December 5, 2010; and from December 29, 2010, through January 20, 2012, which are the periods of temporary total disability for which compensation is payable.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of \$330.00 per week for a period of 100 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused permanent partial disability equivalent to 20 percent loss of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of \$16,919.23 in penalties pursuant to Section 19(k), and award of \$6,767.92 in attorney fees pursuant to Section 16 are hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner additional compensation in the amount of \$6,040.00, as provided in Section 19(l) of the Act.

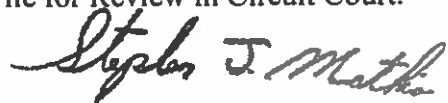
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's October 2, 2013, motion to strike Petitioner's response brief is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **APR 29 2014**
SM/db
o-03/06/14
44



Stephen J. Mathis



David L. Gore



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RUIZ, NORMA

Employee/Petitioner

Case# 08WC041154

141WCC0305

NUEVO LEON RESTAURANT

Employer/Respondent

On 3/13/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0125 COHN LAMBERT RYAN & SCHNEIDER
MICHAEL R SCHNEIDER
500 W MADISON ST SUITE 2300
CHICAGO, IL 60661

MARIA GUITERREZ, INDIVIDUALLY
& D/B/A RESTAURANTE NUEVO LEON
1705 S LAFLIN ST
CHICAGO, IL 60608

0210 GANAN & SHAPIRO PC
ELAINE T NEWQUIST
210 W ILLINOIS ST
CHICAGO, IL 60654

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Norma Ruiz
Employee/Petitioner
v.

Case # 08 WC 41154

Nuevo Leon Restaurant
Employer/Respondent

1411540000

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Milton Black**, Arbitrator of the Commission, in the city of **Chicago**, on **October 19, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☒ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On **August 18, 2008**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$28,600.00**; the average weekly wage was **\$550.00**.

On the date of accident, Petitioner was **34** years of age, *single* with **3** children under 18.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$13,514.00** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$13,514.00**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary partial disability benefits of **\$256.67** /week for **7** weeks, commencing **October 4, 2010** through **October 29, 2010** and from **December 6, 2010** through **December 26, 2010** and an additional **\$359.35**/week for **2/7^{ths}**/week, commencing **December 27, 2010** through **December 28, 2010** as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **\$366.67** /week for **129 1/7th** weeks, commencing **August 19, 2008** through **January 5, 2009**, from **October 15, 2009** through **February 24, 2010**, from **February 25, 2010** through **October 3, 2010**, from **October 30, 2010** through **December 5, 2010**, and from **December 29, 2010** through **January 20, 2012** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **August 19, 2008** through **January 20, 2012**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of **\$ 13,514.40** for temporary total disability benefits that have been paid.


Respondent shall pay Petitioner permanent partial disability benefits of **\$330.00** /week for **300** weeks, because the injuries sustained caused the **60 %** loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay to Petitioner penalties of **\$6,767.92**, as provided in Section 16 of the Act; **\$16,919.23**, as provided in Section 19(k) of the Act; and **\$6,040.00**, as provided in Section 19(l) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

14IWCC0305

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

March 13, 2013
Date

MAR 13 2013

PROCEDURAL HISTORY

This is the third hearing before this Arbitrator. The first arbitration was an emergency proceeding heard on the issues of causal connection, medical expenses, temporary total disability, prospective medical treatment, and penalties. This Arbitrator's decision of April 26, 2009 made a finding of causation and awarded medical expenses, temporary total disability, prospective medical treatment, and penalties. Both parties filed reviews.

Thereafter there were additional pretrial arbitration proceedings, which resulted in some agreement. Pursuant to the parties' agreement, Respondent authorized and Petitioner attended one follow up visit with a University of Illinois Medical Center physician, Petitioner had a Section 12 examination with Dr. Anthony Rinella, and Respondent paid a \$1,650.00 advance.

While the reviews were pending, the second emergency arbitration was heard February 24, 2010 on subsequent issues of causal connection, temporary total disability, prospective medical treatment, and penalties. After the second arbitration hearing had been concluded, the Commission issued a detailed review decision for the first proceeding in Commission case number 10 IWCC 403, modifying the awards of temporary total disability and penalties, but affirming all else.

This Arbitrator's second decision, dated May 11, 2010, made another finding of causation and awarded additional temporary total disability, further prospective medical treatment consisting of a functional capacity evaluation, and additional penalties. Petitioner filed another review.

In a subsequent decision filed under Commission case number 11 IWCC 789, a majority of the Commission panel extended the award of temporary total disability to the arbitration hearing date of February 24, 2010, ordered Petitioner to cooperate with the functional capacity evaluation the results of which were to be communicated to Dr. Engelhard and Dr. Rinella for their review, and affirmed all else. The dissenting Commissioner would have affirmed and adopted the second arbitration decision in its entirety.

There have been no further appeals.

STATEMENT OF FACTS

Petitioner underwent the ordered functional capacity evaluation on October 4, 2011. The functional capacity evaluation included "significant musculoskeletal findings", "functional performance", "functional simulation", "functional joint mobility test" and "consistency/validity". The report stated that Petitioner put forth maximum effort (PX2).

Dr. Rinella received that report. In his January 20, 2012 report, Dr. Rinella stated that the functional capacity evaluation showed Petitioner could work at a light duty level per the United States Department of Labor Statutes. Dr. Rinella stated that light duty includes maximum lifting and carrying capacity of 20 pounds from the floor to the waist. Dr. Rinella stated that Petitioner's permanent restrictions should be based on the October 4, 2011 functional capacity evaluation (PX3).

Petitioner testified that she lives with pain and that her right leg goes numb.

Petitioner worked for a short time at the dress shop, known as Scelebrations, which is owned by a friend. The friend had opened an ethnic orientated dress, party and gift shop for special events. Petitioner testified to the accuracy of payment records subpoenaed from Scelebrations (PX1). The payment records show that she was employed 20 hours per week for a four week period from October 4, 2010 through October 29, 2010 at \$165.00 per week, that then she was employed 20 hours per week for a three week period from December 6, 2010 through December 24, 2010 at \$165.00 per week, and that finally she was employed two days on December 27,

14IWCC0305

2010 and December 28, 2010 for \$66.00. (PX1). No taxes were withheld by Scelebrations. A 2010 Form 1099 shows \$1,221.00 (PX1).

Petitioner described her activities there as being light and that for many hours of the day socializing with the owner. Petitioner testified that the job offer was prompted by friendship more than her friend's need. Petitioner testified that her friend had full time employees and had requested Petitioner be there in order to get her out of the house and lift her spirits.

Respondent paid temporary total disability payments through February 24, 2010, as ordered by the Commission. Respondent disputes any further temporary compensation.

Petitioner has filed a document entitled "Election To Waive Rights To Recover Under Section 8(d) 1 Of The Act". That filed document and Petitioner's proposed decision requests permanent benefits under Section 8(d) 2 of the Act.

TEMPORARY TOTAL DISABILITY

The last Commission decision ordered that temporary total disability benefits were to be paid up to the arbitration date of February 24, 2010. Respondent has offered no medical evidence that there has been any change in Petitioner's physical condition. In the absence of any contrary medical evidence, temporary total disability benefits ought to have been continued in accordance with that Commission decision. Temporary benefits should have been paid through January 20, 2012, the date of Dr. Rinella's Commission ordered review.

Based upon the foregoing, the claimed temporary total disability benefits shall be awarded.

TEMPORARY PARTIAL DISABILITY

Petitioner's proposed finding asserts that she wishes to compute this benefit claim based upon gross earnings. The Arbitrator adopts Petitioner's proposed computation of subtracting \$165.00 from the average weekly wage of \$550.00, then awarding two thirds of the difference: for the third period, two days of work or two fifths of a week, the Arbitrator has subtracted the prorated amount for the two additional days worked on December 27th and December 28th from the average weekly wage of \$550.00 per week and awarding two thirds

of that difference.

NATURE AND EXTENT

Based upon Petitioner's continuous credible testimony, the continuous medical records, and the continuous credible medical opinions of Dr. Rinella, Petitioner has lost her trade, of many years, as a waitress.

Therefore, the Arbitrator finds that Petitioner has sustained a 60% loss of the person as a whole.

PENALTIES

Despite credible medical evidence, despite prior Arbitration decisions and prior Commission decisions, and despite prior assessment of penalties, Am Trust Group, Respondent's workers' compensation insurance carrier, has been consistently dismissive of Petitioner's injuries. The history of this case, as demonstrated through three Arbitration hearings and two Commission reviews, shows a pattern of vexatious failure to pay and unreasonable delay occasioned by Am Trust Group. Therefore, penalties should be assessed.

Pursuant to Section 19(l) of the Act, Petitioner is entitled to a late fee penalty of \$30.00 per day, which is hereby assessed for the third time. The time delays in commencing temporary total disability benefits have pierced the \$10,000.00 cap. Prior Section 19(l) penalty assessments of \$1,950.00 and \$2,010.00 total \$3,960.00, leaving a balance of \$6,040.00 in Section 19(l) late fee penalties.

As explained above, the continuing failure to pay has been unreasonable and vexatious. Since the last Commission decision, there has been an accrual of 33,838.46 in unpaid temporary total disability benefits. Pursuant to Section 19(k) of the Act, a 50% penalty in the amount of \$16,919.23 is assessed.

For the reasons stated in this decision, attorneys' fees shall be assessed on the accrual of 33,838.46 in unpaid temporary total disability benefits. Pursuant to Section 16 of the Act, attorneys' fees of 20% in the amount of \$6767.92 are assessed.

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

| | |
|---|--|
| <input type="checkbox"/> Affirm and adopt (no changes) | <input type="checkbox"/> Injured Workers' Benefit Fund (§4(d)) |
| <input checked="" type="checkbox"/> Affirm with changes | <input type="checkbox"/> Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> Reverse <input type="text" value="Choose reason"/> | <input type="checkbox"/> Second Injury Fund (§8(e)18) |
| <input type="checkbox"/> Modify <input type="text" value="Choose direction"/> | <input type="checkbox"/> PTD/Fatal denied |
| | <input checked="" type="checkbox"/> None of the above |

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT PARMELY, JR.,

Petitioner,

vs.

NO: 11 WC 30596

14IWCC0306

METROPOLIS NURSING & REHAB CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability and prospective medical, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission notes that the Petitioner's major current complaint appears to be medial knee pain, which is in the vicinity of where the MRI, per Dr. Jackson, showed a complex medial meniscus tear. While Dr. Jackson's uncertainty with regard to the efficacy of arthroscopic surgery is acknowledged, the Commission finds that the arthroscopic surgery should initially be attempted, as this could delay the need for a total knee replacement, given the Petitioner's relatively young age. If the arthroscopic surgery fails to cure or relieve the Petitioner from the effects of the February 21, 2011 accident, and Dr. Jackson opines that a total knee replacement is

14IWCC0306

still required, the Commission finds that such knee replacement surgery would remain causally related to the February 21, 2011 accident.

The Commission further modifies the Decision of the Arbitrator to indicate that the awarded period of temporary total disability, July 28, 2011 through June 26, 2013, totals 99-6/7 weeks, as opposed to the awarded period of 91 weeks. If any portion of this period of TTD was previously paid by Respondent, then Respondent is entitled to credit for same.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$241.71 per week for a period of 99-6/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,755.46 for medical expenses under §8(a) of the Act, SUBJECT TO FEE SCHEDULE??

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize arthroscopic right knee surgery as prescribed by Dr. Jackson pursuant to §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit in the amount of \$5,818.93 under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0306

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$20,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 29 2014
TJT: pvc
o 3/25/14
51



Thomas J. Tyrrell



Michael J. Brennan



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

PARMELY, ROBERT

Employee/Petitioner

Case# 11WC030596

METROPOLIS NURSING & REHAB
CENTER

Employer/Respondent

14IWC0306

On 8/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2546 FEIST LAW FIRM LLC
KREIG B TAYLOR
617 E CHURCH ST SUITE 1
HARRISBURG, IL 62946

1337 KNELL & KELLY LLC
PATRICK JENNETTEN
504 FAYETTE ST
PEORIA, IL 61603

STATE OF ILLINOIS

COUNTY OF MADISON)

14 IWCC 0306

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ROBERT PARMELY

Employee/Petitioner

Case # 11 WC 30596

v.

Consolidated cases: ____

METROPOLIS NURSING & REHAB CENTER

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **June 26, on 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☒ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other ____

FINDINGS

On the date of accident, **2/21/2011**, Respondent *was* operating under and subject to the provisions of the Act. On this date, an employee-employer relationship *did* exist between Petitioner and Respondent. On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment. Timely notice of this accident *was* given to Respondent. Petitioner's current condition of ill-being *is* causally related to the accident. In the year preceding the injury, Petitioner earned \$; the average weekly wage was **\$241.71**. On the date of accident, Petitioner was **54** years of age, *married* with **0** dependent children. Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services. Respondent is entitled to a credit of **\$5,818.93** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$241.71/week for 91 weeks, commencing 7/28/11 through 6/26/13, as provided in Section 8(b) of the Act.

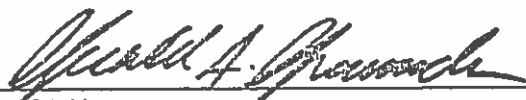
Respondent shall pay reasonable and necessary medical services of \$1,755.46, as provided in Section 8(a) of the Act.

Respondent shall authorized the prospective medical treatment as indicated by Petitioner's treating physician.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

8/6/13

Date

AUG 7 - 2013

14IWCC0306

FINDINGS OF FACT

On February 21, 2011, Robert Parmely, hereinafter referred to as "Petitioner," slipped on a wet floor and injured his right knee while employed by Metropolis Nursing and Rehab Center, hereinafter referred to as "Respondent." Petitioner continued to work on that date, and finished his shift.

On February 24, 2011, Petitioner went to the Emergency Room at Massac Memorial Hospital at which time Petitioner was prescribed pain medications and placed on crutches.

After continuing to experience pain in his right knee, Petitioner went to his primary physician, Dr. Thomas Staton, on February 28, 2011. On that date, Dr. Staton ordered an MRI scan of the right knee and continued Petitioner on crutches. Dr. Staton referred Petitioner to Dr. Stephen Jackson, an orthopedic specialist.

Dr. Jackson saw Petitioner for examination treatment on March 17, 2011. On that date he found that Petitioner was tender along the medial joint line, that he had no lateral instability, that the anterior and posterior drawer tests were negative and that Petitioner had a positive McMurray test along the medial joint line. Dr. Jackson reviewed x-rays which revealed a significant medial compartment narrowing of Petitioner's knees with bone on bone findings bilaterally. He also reviewed an MRI which indicated a complex tear of the medial meniscus as well as a low grade sprain of the medial collateral ligament. Dr. Jackson injected the right knee and scheduled a follow up. Dr. Jackson continued to treat Petitioner conservatively, providing injections and a brace. Dr. Jackson has recommended an arthroscopic debridement which has not been approved. On February 8, 2013 Dr. Jackson's deposition was taken at which time he testified that Petitioner's complaints regarding his right knee were aggravated by his injury at work.

Petitioner continues to use crutches and since the date of the accident has at times used a walker and wheelchair to become mobile.

On July 7, 2011, Petitioner attended an Independent Medical Evaluation, performed by Dr. August Ritter. Dr. Ritter opined that Petitioner had bilateral knee degenerative arthritis and a resolved medial collateral ligament strain in his right knee which was related to his work injury. Dr. Ritter believed that Petitioner had reached maximum medical improvement in regards to his work related injury and that his impairment was directly related to the underlying degenerative arthritis of his knee. Dr. Ritter's opinion is contrary to the opinion of Petitioner's treating physician, Dr. Jackson.

Petitioner has been off work since July 28, 2011 and has not received any temporary total disability benefits.

Petitioner has outstanding medical bills in the amount of \$1,755.46

14IWCC0306

CONCLUSIONS OF LAW

1. Petitioner has met his burden of proof regarding causation. In that regard, the Arbitrator finds the testimony of the treating physicians persuasive. Petitioner's testimony was also credible and unrebutted regarding his accident, his complaints and his subsequent medical care.
2. Based on the Arbitrator's findings regarding causation, the Petitioner is awarded temporary total disability benefits from July 28, 2011 through June 26, 2013.
3. Petitioner's medical treatment thus far has been both reasonable and necessary. Accordingly, the Respondent is ordered to pay Petitioner's outstanding medical bills and is directed to authorize treatment with Dr. Stephen Jackson including, but not limited to, the previous treatment and tests recommended by him. Respondent shall receive a credit for any medical expenses it has already paid.

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

| | |
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| <input type="checkbox"/> Affirm and adopt | <input type="checkbox"/> Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> Affirm with changes | <input type="checkbox"/> Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> Reverse | <input type="checkbox"/> Second Injury Fund (§8(e)18) |
| <input type="checkbox"/> Modify | <input type="checkbox"/> PTD/Fatal denied |
| | <input checked="" type="checkbox"/> None of the above |

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PETER AHN,

Petitioner,

14IWCC0307

vs.

NO: 00 WC 49859

CIRCUIT CITY STORES,

Respondent.

DECISION AND OPINION PURSUANT TO 19(H)/8(A)

This claim comes before the Commission on a Petition for Review under Sections 19(h) and 8(a), filed by Petitioner on October 29, 2007. No question has been raised concerning the timeliness of Petitioner's Petition. Commissioner Lamborn conducted a hearing in this matter on December 18, 2008.

After considering the issues and being advised of the facts and law, the Commission denies Petitioner's Petition for Review under Section 19(h) and 8(a) and finds that Petitioner failed to prove a material increase in his work-related disability since the date of Arbitration, April 13, 2005.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. On September 14, 2000, Petitioner filed an Application for Adjustment of Claim for May 11, 2000 work-related injuries to his head, neck, back, chest, and alleged headache, neck pain, backache, blurry vision, chest pain, hypertension, dizziness and disorientation as a result of the work related automobile accident.
2. An Arbitration hearing was held on April 19, 2005, before Arbitrator Lee. Issues in dispute at the time of hearing were causal connection, medical expenses, temporary total disability, permanent partial disability, penalties and attorney fees, and credit. Petitioner's work accident of

14IWC0307

May 11, 2000 is undisputed. On that day, Petitioner, a service technician for Respondent, was driving a minivan when he was struck from behind by another motorist, Peter Jansma. Petitioner testified he "blanked out" and spit up broken teeth, but admitted he did not strike his head on the dashboard or steering wheel, and the motorist that struck him from behind, Jansma, testified Petitioner denied having sustained any injury, and that Petitioner exhibited no signs of injury. Petitioner and Jansma drove to the police station and completed an accident report immediately after the accident. Petitioner continued working for Respondent for several days thereafter, but testified he experienced headaches as well as back and neck pain. Petitioner stopped working for Respondent and then sought no medical treatment until June 1, 2000, 21 days after the accident, when he was seen by Dr. Ikuhara.

3. On June 1, 2000, Dr. Ikuhara noted Petitioner was suffering from hypertension and ordered an MRI of the brain, the results of which were negative. Dr. Ikuhara diagnosed "post-concussion" and subsequently changed Petitioner's diagnosis to "heart murmur." An October 9, 2000 echocardiogram was found to be within normal limits. During that same period of time, Petitioner sought medical treatment with five other medical providers. On October 9, 2000, P was seen by Dr. Brilla, at Respondent's request, who diagnosed possible whiplash and persistent neck pain. Thereafter Petitioner began treating with Dr. Vern, and underwent an EMG of the upper extremities, which showed mild radiculopathy at C8 of unknown cause, and a cervical MRI which demonstrated degenerative changes.

4. On March 8, 2001, Dr. Skaletsky examined Petitioner at the request of Respondent and diagnosed cervical, thoracic, and lumbar pain without any objective basis. In May of 2003, Dr. Vern noted Petitioner had nothing new on examination, and that he had nothing more to offer Petitioner. Petitioner subsequently began treating with Dr. Baehr, who had Ph.D. in philosophy and Masters of Arts Degree with a specialty in psychology, undergoing 75 office visits, for neurofeedback and cognitive therapy. Dr. Baehr referred Petitioner to Dr. Catellani, a general internist with no hospital privileges. Dr. Catellani treated Petitioner from May 2001 through May of 2004, and made numerous diagnoses: chronic headaches based upon Petitioner's subjective complaints, neck and back pain, hypertension, visual disturbance, aortic insufficiency, and right cervical radiculopathy. Dr. Catellani also diagnosed tinnitus during the course of Petitioner's treatment. However, Petitioner was examined by Dr. Clemis on January 4, 2002 with regard to his tinnitus complaint, and noted Petitioner "exhibited strange behavior throughout her entire office visit and ... began surreptitiously tape recording some of my comments to him without any discussion and/or without my permission;" Dr. Clemis concluded that he "found nothing wrong with him and no diagnosis could be established... a trial of histamine only for his subjective symptoms of tinnitus could be tried."

5. Dr. Hartman, a Board Certified neuropsychologist specializing in diagnostic issues related to brain function and psychotherapy, examined Petitioner on October 28, 2003, at the request of the defendant in Petitioner's civil case related to this motor vehicle accident. On that date, Dr. Hartman conducted an all day evaluation, and opined the treatment rendered by Dr. Baehr was unreasonable, unnecessary, inappropriate and possibly unethical. Dr. Hartman opined Petitioner was not suffering from post-concussion syndrome, but from hypertension unrelated to the accident. Dr. Hartman also opined Petitioner was suffering from malingering, noting that Petitioner was "faking every test that I gave him" and that there was no evidence of any

14IWCC0307

traumatic brain injury. Dr. Hartman opined Petitioner was only suffering from malingering, and that there was no pathology related to central nervous system as result of his work-related injury. Dr. Hoffman opined Petitioner's hypertension should be brought under control prior to his return to work, but that there was no neuropsychological sequelae precluding Petitioner's return to work.

6. The Arbitrator issued a decision on July 13, 2005, finding that Petitioner was entitled to temporary total disability benefits for a period of 32 weeks, from September 19, 2000 through May 1, 2001, at the rate of \$723.33 per week, that Petitioner incurred permanent partial disability to the extent of 15% loss of use of the person as a whole under Section 8(d)2 of the Act, that penalties and attorney's fees were not warranted based upon Respondent's good and just cause in denying payment of additional temporary total disability benefits and medical benefits claimed by Petitioner, that Respondent was entitled to credit under Section 8(j) for medical bills paid by Respondent's group carrier, that Petitioner's complaints of cervical pain and largely resolved soft tissue/post-whiplash injury were causally related to the work accident, but that the remainder of Petitioner's complaints and symptoms were either not supported by the objective and diagnostic studies or were related to non-work-related and pre-existing conditions. (PX8). The Arbitrator found that the Petitioner's condition of cervical pain was causally related to the accident, but that his condition was largely resolved per his treating physician, Dr. Vern, as of May 22, 2003. At time of the Arbitration hearing Petitioner complained of difficulty in concentration, tunnel vision, dizziness, right side paralysis, and nervousness, however the Arbitrator found that those complaints were not substantiated by any objective or diagnostic studies, and were only based upon Petitioner's subjective complaints.

7. On July 27, 2005, Petitioner appealed the Decision of Arbitrator Lee, raising issues of casual connection, temporary total disability benefits, medical expenses, permanent partial disability, and penalties and attorney's fees. On August 29, 2007, the Commission affirmed and adopted the Arbitrator's July 13, 2005 Decision. (PX9).

8. On October 29, 2007, Pro Se Petitioner filed a Petition for Review under Sections 19(h)/8(a).

9. A hearing under Sections 19(h) and 8(a) was held on December 18, 2008 before Commissioner Lamborn. Petitioner's medical records reflect the following treatment:

On July 21, 2005, Petitioner underwent a CT Angiogram of the coronary arteries, neck & brain. The study found no brain abnormality or intracranial aneurysm, and very mild pulmonary venous congestion. (PX2).

On August 15, 2005, Dr. Ernest Mhoon from the University of Chicago Department of Surgery, Section of Otolaryngology, examined Petitioner, on referral by Dr. Catallani. Petitioner provided a history of intractable, high frequency tinnitus in both ears approximately of five years duration. Petitioner further reported the onset of tinnitus correlated with head trauma he received that resulted in a brief loss of consciousness, that initially he had severe headaches, neck, back and chest pains, and occasional dizziness, and that all the symptoms except for tinnitus improved. Petitioner further admitted that no abnormalities were found on CT, MRI, or MRA scans. Petitioner's otolaryngologic

14IWCC0307

examination on August 15, 2005 was found to be unremarkable, with normal hearing in both ears between 250 and 4000Hz, and beyond 4000Hz a decrease in hearing in the right ear extending to 55dB at 6 and 8KHz. Petitioner's speech discrimination scores were further found to be within normal limits, as was tympanogram, but that otoacoustic emissions were absent in both ears. Dr. Mhoon opined Petitioner had a history and findings consistent with bilateral intractable tinnitus of probably post-traumatic origin. He opined there were no reliable methods of treatment for this form of tinnitus, that masking and tinnitus retraining have been met with some success, but that failing that, some patients have responded to tranquilizer or antidepressant. Dr. Mhoon recommended Petitioner follow up if symptoms changed in the future.

10. No other medical records were tendered into evidence. No physical testimony was presented at the time of the 19(h)/8(a) hearing.

11. At the 19(h)/8(a) hearing on December 18, 2008, Petitioner testified that with regard to his Section 8(a) Petition, he had no medical bills with him to submit at the time of hearing, and that he submitted no medical bills to Respondent for payment. (T6-8). Petitioner testified that most of his body pain and symptoms have improved since his work-related injury, but that his brain function was still a problem, that he was incapable of handling the stress and financial numbers associated with his Chicago Board of Trade job, and that he has been told to find another place to work. Petitioner testified that through the filing of his 19(h)/8(a) Petition he was attempting to secure authorization for additional treatment for his brain function and tinnitus. (T20-24).

CONCLUSION

After consideration of the facts in this case, the Commission denies Petitioner's 8(a) Petition on its face, finding Petitioner failed to submit any medical bills for consideration under Section 8(a).

With regard to Petitioner's 19(h) Petition, the Commission further finds that Petitioner failed to prove a material increase in his work-related physical disability since the Arbitration hearing on July 13, 2005. In Gay v. Industrial Commission, 178 Ill. App. 3d 129, 132 (1989), the Illinois Supreme Court explained that: "[t]he purpose of a proceeding under section 19(h) is to determine if a petitioner's disability has "recurred, increased, diminished or ended" since the time of the original decision of the Industrial Commission. (Ill. Rev. Stat. 1985, ch. 48, par. 138.19(h); Howard v. Industrial Commission (1982), 89 Ill. 2d 428, 433 N.E.2d 657.) To warrant a change in benefits, the change in a petitioner's disability must be material. (United States Steel Corp. v. Industrial Commission (1985), 133 Ill. App. 3d 811, 478 N.E.2d 1108.) In reviewing a section 19(h) petition, the evidence presented in the original proceeding must be considered to determine if the petitioner's position has changed materially since the time of the Industrial Commission's first decision. (Howard, 89 Ill. 2d 428, 433 N.E.2d 657.)

The Commission notes that by Petitioner's own admission, at the time of December 18, 2008 hearing, and in the August 15, 2005 medical report of Dr. Mhoon, submitted at the time of the December 18, 2008 hearing, his cervical pain/whiplash condition improved following the original arbitration hearing. The evidence in the record fails to show any material change in his

14IWC0307

cervical pain/whiplash condition of ill-being. Furthermore, in reviewing Petitioner's testimony regarding the effect of his condition on his daily life since the arbitration hearing, it is clear to the Commission that there is nothing to indicate his cervical pain/whiplash condition and symptoms have changed since the time of the original arbitration hearing. Instead, Petitioner's unrelated conditions of tinnitus and "brain function" appear to be the basis for his 19(h) and 8(a) Petition. Petitioner failed to prove any worsening of his cervical pain/post whiplash injury, which was the only condition found to be causally related to his work injury. Petitioner presented no credible evidence of any material change in his physical condition, work restrictions, employment status, or medical condition, as it relates to his work related injury. The record contains no evidence to support Petitioner claim that his disability recurred or increased. The only medical records tendered into evidence, that were not presented at the prior April 19, 2005 Arbitration hearing, was a July 2, 2005 CT Angiogram of the coronary arteries, neck & brain, and an August 15, 2005 report of Dr. Mhoon. The July 2, 2005 CT Angiogram of the coronary arteries, neck & brain was noted to be within normal limits, except for very mild pulmonary venous congestion. Petitioner offered no treating records or medical opinions causally connecting this testing or findings to his May 11, 2000 work-related injury condition- cervical pain, post-whiplash. The Commission further notes that while Dr. Mhoon, in his August 15, 2005 consultation report, concluded Petitioner has tinnitus and opined that Petitioner has trauma induced tinnitus, this opinion was based upon the history Petitioner provided to Dr. Mhoon, and there was no indication objectively that Petitioner's tinnitus condition somehow worsened between the April 2005 arbitration hearing and August 2005 consultation with Dr. Mhoon. Furthermore, the Commission previously found Petitioner's tinnitus condition was to be unrelated to his work-related injury based upon the January 4, 2002 evaluation of Dr. Clemis, who concluded Petitioner had "nothing wrong with him and no diagnosis could be established... a trial of histamine only for his subjective symptoms of tinnitus could be tried."

Therefore, the Commission finds that Petitioner failed to prove a material change in his disability, or entitlement to an award of medical care, and denies Petitioner's claim for compensation pursuant to Section 19(h) and Petitioner's claim for medical care pursuant to Section 8(a) of the Act.

14IWCC0307

Based on the above, the Commission denies Petitioner's Petition pursuant to Sections 19(h) and 8(a).

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition under Sections 8(a) and 19(h) is hereby denied.

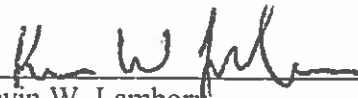
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

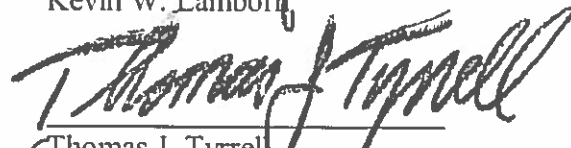
DATED: APR 29 2014

KWL/kmt

O-04/08/14

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Kevin W. Lamborn


Thomas J. Tyrrell


Michael J. Brennan

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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| <input checked="" type="checkbox"/> Affirm and adopt | <input type="checkbox"/> Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> Affirm with changes | <input type="checkbox"/> Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> Reverse | <input type="checkbox"/> Second Injury Fund (§8(e)18) |
| <input type="checkbox"/> Modify | <input type="checkbox"/> PTD/Fatal denied |
| | <input checked="" type="checkbox"/> None of the above |

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Charles Bellizzi,
 Petitioner,

vs.

United Parcel Service,
 Respondent.

NO: 08 WC 10502

14IWCC0308

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue(s) of Permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 5, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

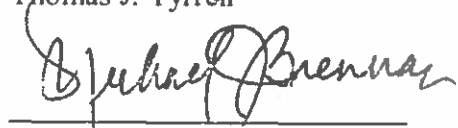
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **APR 29 2014**
 KWL/vf
 O-4/8/14
 42


 Kevin W. Lamborn


 Thomas J. Tyrrell


 Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0308

BELLIZZI, CHARLES

Employee/Petitioner

Case# **08WC010502**

UNITED PARCEL SERVICE

Employer/Respondent

On 4/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1414 O'CONNOR LAW GROUP LLC
BRYAN J O'CONNOR
221 N LASALLE ST SUITE 1050
CHICAGO, IL 60601

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
BETH DOLEHIDE
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

| | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0308

Charles Bellizi
Employee/Petitioner

Case # 08 WC 10502

v. Consolidated cases: N/A

United Parcel Service
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **February 20 and 21, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On **October 8, 2007**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident as explained *infra*.

In the year preceding the injury, Petitioner earned **\$70,081.63**; the average weekly wage was **\$1,622.25**.

On the date of accident, Petitioner was **53** years of age, *married* with **no** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services as explained *infra*.

Respondent shall be given a credit of **\$151,729.50** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$151,729.50**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act. *See* AX1.

ORDER

Medical Benefits

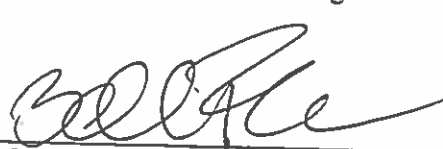
As explained more fully in the Arbitration Decision Addendum, Respondent has no further liability to Midwest Academy of Pain & Spine for medical expenses pursuant to Sections 8(a) and 8.2 of the Act.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of \$636.15/week for 150 weeks, because the injuries sustained caused the 30% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

April 4, 2013

Date

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM***

Charles Bellizi

Employee/Petitioner

v.

United Parcel Service

Employer/Respondent

Case # **08 WC 10502**

Consolidated cases: **N/A**

14IWCC0308

FINDINGS OF FACT

The issues in dispute include causal connection, medical bills, and the nature and extent of Petitioner's injury. Arbitrator's Exhibit ("AX") 1. The parties have stipulated to all other issues. AX1.

Background

Petitioner testified that he has been a truck driver for Respondent since April 1, 1991. Since October of 2007, he worked as a road feeder driver moving loads to other hubs across states. Petitioner had a regular route five days per week from Palatine, Illinois to Davenport, Iowa to Peru, Illinois and back to Palatine, Illinois.

On October 8, 2007, Petitioner testified that he was walking into through the Palatine hub building when a cargo bar struck him in the head causing bleeding and knocking him to one knee. *See also* PX2 at 14; PX20a-e. Petitioner testified that he was stunned and confused. The accident was witnessed and another driver assisted Petitioner. Petitioner also reported the accident to a manager and he rested for some time before he went to the emergency room for medical attention.

Petitioner testified that he had tongue cancer in the 1990s requiring surgery, but that he had no neck injuries since that time. He also testified that he had no pain complaints, limitations, disabilities, or other prior head injuries in 10 years prior to his accident at work. The medical records reflect that Petitioner also has a history of a total hip replacement. PX1 at 8, 10.

Medical Treatment

On October 8, 2007, Petitioner went to the emergency room at Alexian Brothers Medical Center ("Alexian"). PX1. He reported being hit in the head with a metal bar, loss of consciousness, jaw pain, and ringing in his ears. PX1 at 8. Petitioner underwent CT head scans which were negative, received pain medication and was placed off work for two days. PX1 at 7, 12-17.

Petitioner followed up with his primary care physician, Dr. Demke, on November 5 and 12, 2007 reporting headaches, pain, blurred vision, throbbing, light sensitivity, noise sensitivity, dizziness, worsened headaches with certain activities, neck stiffness and pain that worsened after his accident with radiation into the bilateral upper extremities with paresthesias and numbness. PX2 at 11-22. Dr. Demke noted that Petitioner's work injury caused left sided headaches, and generalized headaches, dizziness, and confusion with progressively worsening headaches, neck and shoulder pain, and bilateral upper extremity paresthesias and numbness. *Id.* He diagnosed Petitioner with: (1) posttraumatic headaches; (2) left zygomaticotemporal neuralgia and occipital neuralgia; (3) whip lash injury and cervicalgia; (4) cervical radiculopathy; and (5) neuropathic pain into the arms and hands. PX2 at 19. Dr. Demke ordered an MRI of the head without contrast, which Petitioner

underwent and was normal. PX2 at 9, 21; PX3. He ordered medication management, but recommended nerve blocks if that conservative treatment failed. PX2 at 21-22.

Dr. Demke referred Petitioner to Dr. Elborno for the nerve blocks. PX2 at 23. On November 20, 2007, Dr. Elborno performed a left zygomaticotemporal nerve block and left occipital nerve block under fluoroscopy guidance. *Id.* Pre- and postoperatively, Dr. Elborno diagnosed Petitioner with the following: (1) left zygomaticotemporal nerve neuralgia; (2) left occipital nerve neuralgia; and (3) intractable headache. *Id.*; PX5 at 1-3.

Petitioner followed up with Dr. Demke on November 27, 2007 reporting continued headaches of shorter duration, neck pain, and shoulder pain. PX2 at 27-31. He ordered continued and additional medications and diagnosed Petitioner with cervicalgia, a cervical strain/sprain, cervical radiculopathy, associated muscle spasms, nerve disorders, trigeminal neuralgia, and headaches with resistance to medication. PX2 at 29-31.

On December 4, 2007, Dr. Elborno performed a left cervical medial branch block at C3-C7 on the left side under fluoroscopy guidance. PX2 at 33-34. Pre- and postoperatively, Dr. Elborno diagnosed Petitioner with left cervical spondylosis at C3-C7. *Id.*

On December 13, 2007, Petitioner returned to Dr. Demke reporting lessened, but continued, symptomatology. PX2 at 39-51. Dr. Demke ordered continued and additional medications and diagnosed Petitioner with cervicalgia, a cervical strain/sprain, cervicogenic headaches, headaches, and trigeminal neuralgia. PX2 at 43.

On December 17, 2007, Petitioner returned to Dr. Demke with continued symptomatology. PX2 at 53-54. He maintained Petitioner's diagnoses and added a diagnosis of left arm numbness, paresthesias, and dyesthesias. *Id.* The following day, Petitioner underwent a second left cervical medial branch block from C3-C7 with Dr. Elborno. PX2 at 55-57; PX5 at 5-7. He maintained his diagnosis of left cervical spondylosis at C3-C7. *Id.*

On December 27, 2007, Petitioner returned to Dr. Demke with continued symptomatology. PX2 at 61-66. He ordered a cervical spine MRI which showed multiple disc herniations, the largest at C5-C6, and several levels of left neural foramen stenosis. PX2 at 67-69; PX4. Dr. Demke diagnosed Petitioner with cervicalgia, cervical radiculopathy, arm pain and paresthesias, and shoulder pain. PX2 at 61.

On January 3, 2008, Petitioner saw Dr. Demke with persistent left sided temporal pain and left sided neck and arm pain. PX2 at 71-73. He referred Petitioner to Dr. Suwan. *Id.* On January 7, 2008, Dr. Suwan performed an NCS/EMG to test for carpal tunnel syndrome and ulnar neuropathy, cervical radiculopathy, brachial plexopathy, and to rule out neuropathy. PX2 at 77-81. She concluded that Petitioner's test results were abnormal showing bilateral median neuropathy at the wrist (carpal tunnel syndrome) worse on the left, and C5-C7 radiculopathy on the left. *Id.*

Petitioner returned to Dr. Demke on January 10, 2008 at which time he diagnosed Petitioner with cervicalgia, cervical radiculopathy, HNP (herniated nucleus pulposus), spinal stenosis, carpal tunnel syndrome, migraine headaches, zygomaticotemporal neuralgia, [illegible] neuralgia, and occipital neuralgia. PX2 at 87-95. Petitioner continued to report that his symptoms in the neck and arm began after his accident at work. PX2 at 89. Dr. Demke noted that Petitioner's neck and arm symptoms were likely an aggravation of a pre-existing medical condition "because the spinal and foraminal stenosis and HNP would develop over time[.]" *Id.* He did not relate Petitioner's carpal tunnel syndrome to the injury at work on October 8, 2007. *Id.* Dr. Demke

recommended a series of injections to treat the cervical condition, medication to manage Petitioner's headaches, and a nerve block for the neuralgia if necessary. PX2 at 91-92.

Petitioner underwent cervical epidural steroid injections with Dr. Elborno for the bilateral cervical radiculopathy, HNP/herniated disc at C5-C6, and degenerative disease on January 15, 2008, February 12, 2008, and February 26, 2008. PX2 at 105-107, 119-121, 137; PX5 at 11-13, 25. Petitioner followed up with Dr. Demke on January 28, 2008, February 19, 2008, and February 29, 2008 during which time Petitioner reported some relief with the injections, but that his symptoms returned. PX2 at 109-115, 127-135, 143-147.

On January 28, 2008, Dr. Demke noted that Petitioner's multilevel herniated discs and degenerative changes in the neck or likely related to repeated lifting and prolonged driving they were also aggravated by Petitioner's injury at work. PX2 at 111-112. He also prescribed a cervical collar for Petitioner. PX2 at 115. On February 19, 2008, Petitioner requested a referral to an orthopedic surgeon for a second opinion. PX2 at 129-130; PX5 at 19-22.

Petitioner saw Dr. Montella at Midwest Sports Medicine and Orthopedic Surgery ("Midwest Sports") on February 20, 2008. PX11 at 21-25. Petitioner reported that he sought an evaluation for a work injury when he was struck in the head by a bar. *Id.* Petitioner reported a lot of headache and neck pain as well as discomfort into the left arm with numbness and tingling. *Id.* He also reported that the symptoms were daily and constant, and he reported worsening low back pain. *Id.* On examination, Dr. Montella noted limited cervical spine range of motion, tenderness to deep palpation, loss of spinal rhythm, mild loss of lumbar range of motion, and pain down through the neck, shoulders, and bilateral arms, left worse than right. *Id.* Dr. Montella ordered including chiropractic care, anti-inflammatory and pain medications, and placed Petitioner off work through his next appointment. *Id.*

On February 29, 2008, Dr. Demke gave Petitioner a referral to a neurosurgeon for his neck pain and cervical radiculopathy which Petitioner declined and he requested continued physical therapy. PX2 at 143-144; PX5 at 27-30. Dr. Demke ordered an additional nerve block which was administered by Dr. Elborno on March 4, 2008 for left atypical fascial pain and left migraine headache. PX2 at 143-144, 157-159; PX5 at 35-37.

Petitioner underwent physical therapy at The Centers for Physical Therapy beginning on February 29, 2008 through May 21, 2009. PX11(a).

Petitioner returned to Dr. Demke on March 31, 2008 reporting significant improvement in his left sided symptomatology, but persistent neck and left arm pain. PX2 at 167-169. On April 14, 2008, Petitioner reported additional improvement with the last nerve block, but continued neck and arm pain. PX2 at 175-179. Dr. Demke ordered continued medication management and diagnosed Petitioner with posttraumatic headaches/migraines, left zygomaticotemporal neuralgia, cervicogenic headaches, and occipital neuralgia. *Id.*

First Section 12 Examination – Dr. Gutierrez

On April 10, 2008, Petitioner underwent an independent medical evaluation with Dr. Gutierrez at Respondent's request. RX1 at 6-8. Petitioner provided a history of his accident reporting that he was hit on the left side of the head by a bar, suffered a small laceration and brain concussion, and lost consciousness for a few seconds. *Id.* He also provided a history of his emergency room care, pain complaints including headaches, and diagnostic testing and treatment with Drs. Demke and Elborno. *Id.* Petitioner also reported having been athletic all his life, participating in marathons, and a medical history including neck surgery for squamous cell carcinoma, a

total hip replacement in 2004, and medical treatment for right knee problems. *Id.* Dr. Gutierrez examined Petitioner and concluded that Petitioner had cervical spondylosis characterized by degenerative disc disease at multiple levels and a herniated cervical disc at C5-C6 and to a lesser degree at C6-C7. *Id.* He opined that Petitioner's neck pain and radiating upper left extremity pain were related to his cervical pathology and the accident at work which aggravated his condition. *Id.* Dr. Gutierrez also opined that Petitioner's headaches could have initially been related to his concussion sustained on October 8, 2011, but he saw no correlation between Petitioner's then-current headache complaints which were attributed to traumatic temporal nerve irritation (temporal arteritis). *Id.* He recommended physical therapy for the neck, various medications, and possibly surgical intervention if those conservative measures failed. *Id.*; see also RX1 at 5.

Continued Medical Treatment

On April 16, 2008, Petitioner saw Dr. Montella reporting ongoing symptomatology including a lot of discomfort and numbness in his hand consistent with cervical disc herniation. PX11 and 26-29. Dr. Montella noted that Petitioner's physical examination was unchanged from his last visit. *Id.* He ordered continued physical therapy, anti-inflammatory and pain medications, and kept Petitioner off work through this next appointment. *Id.*

In a letter addressed to an insurance adjuster, Ms. Knapp, and dated on or about May 5, 2008, Dr. Suwan agreed with Dr. Gutierrez's opinion that Petitioner had posttraumatic headaches caused by his accident at work and a pre-existing degenerative disc disease of the cervical spine which was aggravated by Petitioner's accident at work. PX2 at 3. However, she noted that Petitioner was never diagnosed, "worked up," or treated for temporal arteritis or headaches related to temporal arteritis. *Id.*

On May 9, 2008, Petitioner saw Dr. Ross at Midwest Neurosurgery and Spine Specialists ("Midwest Neurosurgery") per Dr. Suwan's referral. PX8. Petitioner provided a history to Dr. Ross who performed a physical examination and reviewed Petitioner's cervical spine MRI. *Id.* Dr. Ross opined that Petitioner's neck and left arm symptoms were due in large part to his pre-existing cervical spondylosis, disc herniations, and foraminal stenosis; however, he noted that Petitioner was asymptomatic with regard to these conditions prior to his injury at work and symptomatic afterward. *Id.* He noted that Petitioner was a surgical candidate for an anterior cervical discectomies and fusion from C4-C7 after additional conservative treatment including cortisone injections and physical therapy. *Id.*

On May 28, 2008, Petitioner returned to Dr. Montella reporting continued difficulty with neck and back pain consistent with cervical and lumbar disc herniations which Dr. Montella noted were work-related. PX11 at 30-33. Again, Dr. Montella noted that Petitioner's physical examination remained unchanged. *Id.* He ordered continued physical therapy, anti-inflammatory and pain medications, and kept Petitioner off work through this next appointment. *Id.*

On July 9, 2008, Petitioner saw Dr. Montella reporting difficulties with cervical disc herniation and radiculitis but no profound or progressive neurologic impairment. PX11 at 34-36. Again, Dr. Montella noted that Petitioner's physical examination remained unchanged. *Id.* He ordered continued physical therapy, anti-inflammatory and pain medications, epidural injections which had been previously anticipated if other conservative measures failed, and kept Petitioner off work through his next visit. *Id.*

Petitioner returned to Dr. Montella on August 6, 2008 reporting activity related neck pain. PX11 37-40. Dr. Montella noted that Petitioner's presentation was consistent with cervical and lumbar discogenic pain and radiculitis with no profound or progressive neurologic impairment. *Id.* Again, Dr. Montella noted that

Petitioner's physical examination remained unchanged. *Id.* He ordered continued physical therapy, anti-inflammatory and pain medications, epidural injections, and kept Petitioner off work through his next visit. *Id.*

On September 10, 2008, Petitioner reported continued symptomatology in the neck with radiating arm pain. PX11 at 42-47. Again, Dr. Montella noted that Petitioner's physical examination remained unchanged. *Id.* He ordered continued physical therapy, anti-inflammatory medication, referred Petitioner to Dr. DiGianfilippo for a neurosurgical consultation in anticipation of an anterior cervical discectomy and fusion, and kept Petitioner off work through his next visit. *Id.* Petitioner also reported an injury of the knee at work and Dr. Montella ordered concurrent physical therapy for Petitioner's knee condition. PX11 at 41, 46. The Arbitrator notes that Petitioner does not claim any knee injury in his above-captioned case.

On September 29, 2008, Petitioner returned to Dr. Montella after arthroscopic knee surgery at which time Dr. Montella noted that Petitioner was considering neck surgery. PX11 at 47. Dr. Montella ordered a repeat cervical MRI, anti-inflammatory and pain medications, continued physical therapy for the neck and knee, and kept Petitioner off work until his next appointment. PX11 at 47-49.

On October 15, 2008, Dr. Montella noted that Petitioner's physical examination remained unchanged, reiterated his referral for a neurosurgical consult, ordered continued physical therapy for the neck and knee, and kept Petitioner off work. PX11 at 53-56.

Petitioner saw Dr. DiGianfilippo at West Suburban Neurosurgical Associates ("West Suburban") for an initial consultation on October 17, 2008. Dr. DiGianfilippo recommended a decompressive laminectomy with bilateral foraminotomies from C4-C7. PX9 at 3.

Petitioner followed up with Dr. Montella on November 12, 2008 at which time he noted that Petitioner's physical examination remained unchanged. PX11 at 60-63. Dr. Montella ordered continued physical therapy for the neck and knee, and kept Petitioner off work. *Id.*

Second Section 12 Examination – Dr. Gutierrez

On December 11, 2008, Petitioner underwent a second evaluation with Dr. Gutierrez at Respondent's request. RX1 at 3-4. Dr. Gutierrez agreed that the surgery recommended by Dr. Montella was proper. *Id.*

Continued Medical Treatment

Petitioner underwent preoperative testing and then the recommended surgery with Dr. DiGianfilippo on December 16, 2008 for pre- and postoperative diagnoses of cervical radiculopathy and cervical spondylosis. PX9 at 15-17; PX10. Petitioner also saw Dr. Brar for post-surgical medical management. PX9 at 5-7. He examined Petitioner and noted depression, tingling in the fingers, neck pain, and headaches on examination. *Id.*

On January 15, 2009, Petitioner saw Dr. Montella postoperatively who, again, noted that Petitioner's physical examination remained unchanged. PX11 at 65-67. He ordered a postoperative course of physical therapy, anti-inflammatory medication, and kept Petitioner off work until his next visit. *Id.* Petitioner followed up with Dr. Montella on February 12, 2009, March 17, 2009, April 13, 2009, May 18, 2009, and July 1, 2009. PX11 at 68-86. Dr. Montella ordered continued physical therapy, anti-inflammatory medication, narcotic and non-

narcotic pain medications, a tens unit, and "rehab." *Id.* He also kept Petitioner off work through his next appointment, which was estimated to be 4 to 6 weeks after each visit. *Id.*

Third Section 12 Examination – Dr. Gutierrez

On September 10, 2009, Petitioner underwent a third evaluation with Dr. Gutierrez at Respondent's request. RX1 at 1-2. At that time, Petitioner continued to complain of some muscle spasm in the cervical area with pain. *Id.* Dr. Gutierrez examined Petitioner and found no evidence of radiculopathy or myelopathy. *Id.* He diagnosed Petitioner as status post cervical laminectomy and foraminotomy with persistent muscle spasm in the cervical area and agreed with the recommendation for physical therapy for an additional four weeks to be followed by work hardening. *Id.* He also noted that Petitioner should be able to return to full duty after completing the work hardening program. *Id.*

Petitioner testified that he returned to work on December 3, 2009 and that he had limited mobility, but he wanted to work. *See also* PX12 at 5.

Continued Medical Treatment

Approximately six months after his last visit, Petitioner returned to Dr. Montella on January 28, 2010. PX11 at 87-94. Petitioner reported that his symptoms worsened since his last visit. *Id.* On examination of the neck, Dr. Montella noted normal cervical alignment, paracervical tenderness, and decreased range of motion for flexion/extension/axial rotation. *Id.* He ordered physical therapy including chiropractic care, various medications, and returned Petitioner to work full duty without restrictions. *Id.*

Petitioner returned to Dr. Montella on March 11, 2010 reporting the same symptomatology. PX11 and 95-97. Dr. Montella's examination notes of Petitioner's neck were identical to those at Petitioner's last visit. *Id.* He ordered continued activity modification, anti-inflammatory and pain medications, physical therapy including chiropractic care, and continued to allow Petitioner to work full duty without restrictions. *Id.*

On July 30, 2010, Petitioner saw Dr. Zelby at Neurological Surgery and Spine Surgery ("Neurological Surgery"). PX12 at 5-8. Petitioner provided an accident history as well as constant, plateaued pain and stiffness in his neck radiating to both shoulders down the mid thoracic spine, occasional shooting pain in the left arm and hand, intermittent numbness in the left hand, left arm weakness, and exacerbated pain at the end the week with lifting and chiropractic manipulations. *Id.* On examination, Dr. Zelby noted mild tenderness with deep palpation of the cervical spine, diminished pin sensation in the third and fifth fingers but preserved in the forearm, diminished deep tendon reflexes in the upper and lower extremities except for an absent right biceps reflex, and severely limited range of motion of the cervical spine. *Id.* Dr. Zelby noted that Petitioner had neck pain from degenerative cervical spondylosis which improved after surgery, but plateaued, and worsened with work activities. *Id.* With the exception of numbness in the fingers of the left hand, Petitioner was neurologically normal. *Id.* He ordered an updated cervical spine MRI and allowed Petitioner to continue to work full duty. *Id.*

On August 23, 2010, Petitioner returned to Dr. Zelby. PX12 at 9-11. He reported continued pain in the neck that intermittently radiated to his anterior left arm, intermittent numbness in the left hand, and left arm weakness. *Id.* Petitioner's physical examination was almost identical to that at his last visit. *Id.* Dr. Zelby reviewed Petitioner's August 4, 2010 MRI showing that the spinal canal was widely patent, degenerative disc disease at C5-C7 with loss of disc space height at both levels, a broad-based bulging disc at C3-C4, left on

contra vertebral joint hypertrophy with moderate left foraminal stenosis at C4-C5, a broad-based disc/osteophyte complex with partial defacement of the ventral CSF at C5-C6 and C6-C7, and mild to moderate left foraminal stenosis at C6-C7. *Id.* Dr. Zelby recommended an anterior cervical decompression and fusion ("ACDF") after consulting with Dr. Petruzelli (Dr. Montella's partner at West Suburban and the surgeon that performed Petitioner's cancer operation years before). *Id.* Petitioner was allowed to continue working full duty. *Id.*

On September 22, 2010, Dr. Zelby authored a letter to Colleen Gorski in which he explained the recommended two-level ACDF procedure and anticipated postsurgical requirements and recovery time. PX12 at 15.

Dr. Montella was notified in a letter dated November 22, 2010, that his order for 18 additional cervical physical therapy visits was not certified pursuant to a utilization review. PX11 at 104.

Approximately three months after his last visit, Petitioner returned to Dr. Zelby on January 17, 2011. PX12 at 16-17. Petitioner reported continued neck pain, pain in the posterior aspect of both forearms and hands left worse than right, and occasional numbness in the same distribution but no weakness. *Id.* Petitioner also reported suboccipital headaches and additional chiropractic treatments only exacerbated his pain. *Id.* Petitioner wanted to proceed with the recommended surgery. *Id.*

On May 26, 2011, Petitioner underwent pre-operative testing and the recommended surgery. PX12 at 19-23; PX13. Specifically, he underwent the following procedures: (1) partial corpectomies C5-C6-C7 with C5-C6 and C6-C7 discectomies and decompression of the neural elements; (2) anterior cervical arthrodesis C5-C6 and C6-C7 with PEEK lordotic cages and osteocel plus; (3) anterior cervical instrumentation C5-C6-C7 with a 44 mm helix mini plate; (4) real-time intraoperative C-arm fluoroscopy with image guidance; (5) real-time intraoperative motor evoked potentials and nerve monitoring with rerunning EMG; and (6) right sided neck dissection following cancer, radical neck dissection and radiotherapy by Dr. Doshi. *Id.* Pre- and postoperatively, Dr. Zelby diagnosed Petitioner with a herniated discs at C5-C6 and C6-C7. *Id.*

Petitioner testified that he went home the following morning. *See also* PX13 at 155. He testified that when he arrived at home he had chest pain and collapsed. He also testified that he was taken to the emergency room at St. Alexis and admitted for several days with pulmonary embolism and placed on Coumadin for six months.

The medical records reflect that Petitioner was admitted at St. Alexis on June 3, 2011 under the care of Dr. Demke and referred to Dr. Sakka for a pulmonary consultation. PX14 at 10, 80. Petitioner reported anterior chest and neck pain since his discharge from surgery the previous Saturday which he thought were just postsurgical symptoms. PX14 at 26. Petitioner reported tripping and falling on the edge of the sidewalk on June 2, 2011 while looking around outside his house. PX14 at 10, 79-80, 101-102. Petitioner reported jarring his neck somewhat, but he did not hit his head. *Id.* He then reported experiencing increased neck and anterior chest pain. *Id.* Petitioner's emergency room workup included a chest x-ray and CT scan which showed a small pulmonary emboli in the right lower lobe along a 3 mm nodule. PX14 at 10, 79-80, 88-90. Dr. Demke noted that Petitioner was on Flexeril, Ambien and Norco, and that he was supposed to be on metformin and Synthroid, but he stopped at some time before his recent surgery. PX14 at 80. Dr. Demke diagnosed Petitioner with pulmonary emboli, a lung nodule, past history of squamous cell carcinoma of the neck, cervical disc disease, hypothyroidism, and diabetes. PX14 at 81. Dr. Sakka performed a pulmonary consultation and diagnosed Petitioner with pulmonary emboli, a lung nodule, and past history of squamous cell carcinoma of the neck. PX14 at 82-83. Dr. Sakka ordered an anticoagulant regimen including heparin and Coumadin. *Id.* Petitioner was to follow up with Dr. Sakka for any pulmonary issues. PX14 at 79. Petitioner was discharged on June 7,

2011 with various prescription medications including pain medications, muscle relaxants, and anticoagulants. PX14 at 18-22.

Petitioner did follow up with Dr. Sakka for his pulmonary condition on July 6, 2011, August 3, 2011, October 4, 2011, and November 10, 2011. PX17. Petitioner was discharged from his care on November 10, 2011. PX17 at 9.

On June 10, 2011, Petitioner returned to Dr. Zelby postoperatively at which time he reported an aching and soreness in the neck radiating across his left greater than right shoulders, no pain or numbness in the arms, and no weakness. PX12 at 24-28. Petitioner also reported his pulmonary embolism, several-day hospitalization, and current use of Coumadin. *Id.* Dr. Zelby recommended that Petitioner gradually begin to increase activities as tolerated, ordered a cervical spine x-rays to be taken prior to his next visit, and kept Petitioner off work until his next appointment. *Id.*

On July 13, 2011, Petitioner saw Dr. Zelby and reported aching and soreness in the neck which radiates to the right thoracic paraspinal muscles, but no pain or numbness in the arms. PX12 at 27-28. Dr. Zelby ordered four weeks of physical therapy and kept Petitioner off work until his next appointment. *Id.*; PX15 at 4. Petitioner testified that he began physical therapy three days per week, or requested that he began to four days per week. On August 24, 2011, Dr. Zelby ordered an additional four weeks of physical therapy. PX15 at 5. On September 26, 2011, he ordered work hardening for four weeks. *Id.*

On October 26, 2011, Petitioner saw Dr. Zelby and reported aching and soreness in the neck, but felt that it was improving. PX12 at 29-30. Petitioner also reported that he was not taking any pain medication. *Id.* Dr. Zelby ordered an additional four weeks of progressive work conditioning, x-rays to be taken just prior to his next appointment, a prescription for Ambien, and kept Petitioner off work until his next appointment. *Id.*; PX15 at 6. In addition, Dr. Montella ordered work hardening on November 14, 2011. PX15 at 7.

On November 28, 2011, Petitioner returned to Dr. Zelby reporting feeling well overall with no significant pain except for some mild intermittent pain in the intrascapular area. PX12 at 31-33. Petitioner reported that he felt able to perform his usual job duties. *Id.* Dr. Zelby placed Petitioner at maximum medical improvement and returned him to work without restrictions effective December 5, 2011. *Id.* Dr. Zelby also ordered a functional capacity evaluation. PX15 at 9.

Petitioner underwent a functional capacity evaluation on December 1, 2011, which was deemed valid and found that Petitioner was able to work at the medium physical demand level for all lifting/carrying activities. PX16.

Petitioner testified that after he was released back to work by Dr. Zelby he had the same job duties, but on a different route. Petitioner testified that he has a "day run" now with about 30-40 miles less than he drove before his accident.

Regarding his current condition, Petitioner testified that he experiences pain in neck and upper back area while he works and that he becomes more uncomfortable as his work week progresses. Petitioner described his pain as a nagging toothache-type pain that he experiences daily. Petitioner testified that he takes over-the-counter pain medicine occasionally, has less strength in his arms than he did prior to his accident, and the pain affects his ability to sleep. Petitioner further testified that he had several weightlifting medals previously and that he now avoids lifting because of his limitations; he also has not tried to lift anything over shoulder or head level.

Petitioner is no longer on Coumadin. He testified that he stays active and is limited, but he still jogs and uses weight machines as tolerated. Petitioner did run in a park district race. Petitioner testified that he no longer uses free weights. Finally, Petitioner testified that he has and still uses his TENS unit occasionally, approximately 1-2 times per month, to relieve neck, trapezius and rhomboid area pain.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After hearing the parties' witness testimony, reviewing the evidence, and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

The Arbitrator finds that Petitioner's claimed current condition of ill-being in the neck is causally related to the injury sustained at work on October 8, 2007. In so finding, the Arbitrator relies upon the credible testimony of Petitioner and the plausibly described mechanism of injury resulting in an undisputed accident which is supported by both treating medical records and portions of Respondent's Section 12 examination reports.

To recover in a preexisting condition case, a claimant need only establish a causal connection between his work-related injury and claimed current condition of ill-being by showing that his injury aggravated or accelerated the preexisting disease. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 204-206, 797 N.E.2d 665, 278 Ill. Dec. 70, (2003) (citing *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36-37, 65 Ill. Dec. 6, 440 N.E.2d 861 (1982) (an accidental injury will be deemed compensable if it can be shown that the employment was also a causative factor)). It has long been held that an employer takes its employees as it finds them. *Sisbro*, 207 Ill. 2d at 205 (citing *Baggett v. Industrial Commission*, 201 Ill.2d 187, 199, 775 N.E.2d 908 (2003)). As in this case, even where an employee has a pre-existing condition that renders him more vulnerable to an injury, "recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor." See *Sisbro*, 207 Ill. 2d at 205 (citing *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d at 36; *Williams v. Industrial Commission*, 85 Ill. 2d 117, 122, 51 Ill. Dec. 685, 421 N.E.2d 193 (1981); *County of Cook v. Industrial Commission*, 69 Ill. 2d 10, 18, 12 Ill. Dec. 716, 370 N.E.2d 520 (1977)).

While Petitioner had prior surgery to the neck for cancer and the medical records reveal that Petitioner had degenerative disc disease that had developed prior to his injury at work, Petitioner was essentially asymptomatic until after his accident and Petitioner's treating physicians, along with Dr. Gutierrez, opine that Petitioner's accident aggravated his underlying cervical spine condition. Thus, the Arbitrator finds that Petitioner's current condition of ill-being in the neck is causally related to the injury sustained at work on October 8, 2007.

The Arbitrator further finds that Petitioner's pulmonary emboli and low back conditions are not causally related to his October 8, 2007 injury at work. In so finding, the Arbitrator does not find Dr. Montella's opinion that Petitioner's low back condition is causally related to his injury at work to be supported by objective evidence. Petitioner did not report any mechanism of injury to his low back as a result of his October 8, 2007 accident to any treating physicians, including Dr. Montella. Thus, Dr. Montella's opinion that Petitioner's lumbar disc herniations were work-related is not persuasive and the Arbitrator finds that Petitioner's low back condition of ill being is not causally related to his accident at work on October 8, 2007.

Similarly, the Arbitrator finds that Petitioner's pulmonary emboli condition, which resolved, is not causally related to his injury at work. While the medical records reflect that Petitioner had chest pain after his cervical fusion surgery, there is no evidence that the pulmonary emboli developed as a result of the surgery or any treatment of Petitioner's neck as a result of his October 8, 2007 accident. Indeed, no physician opined that Petitioner's pulmonary condition was causally related to the surgery or Petitioner's ongoing neck treatment and the record reflects that Petitioner suffered from various other conditions, including diabetes and hypothyroidism, for which he took various prescription medications and underwent medical treatment concurrently during his treatment for his neck condition. Based on all of the foregoing, the Arbitrator finds that Petitioner failed to prove that his pulmonary emboli condition, which resolved, was causally related to his injury at work.

In support of the Arbitrator's decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary, and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

Respondent does not dispute the reasonableness and necessity of Petitioner's medical expenses and the parties have stipulated that Respondent will pay certain medical bills that remained unpaid before the first date of trial. See February 20, 2013 Arbitration Hearing Transcript; PX18-18(a). However, Respondent disputes whether the medical expenses listed in Petitioner's Exhibit 18 for treatment rendered by Dr. Suwan or Dr. Elborno at Midwest Academy of Pain & Spine totaling \$7,575.49 should have been paid at the fee schedule rate in the Act, which is higher than the rate negotiated by the provider and the insured. *Id.*

Section 8(a) of the Act provides as follows in pertinent part:

The amount of compensation which shall be paid to the employee for an accidental injury not resulting in death is: (a) The employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury. If the employer does not dispute payment of first aid, medical, surgical, and hospital services, the employer shall make such payment to the provider on behalf of the employee. The employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto. If as a result of the injury the employee is unable to be self sufficient the employer shall further pay for such maintenance or institutional care as shall be required. 820 ILCS 305/8 (Lexis 2007).

Section 8.2 of the Act provides as follows in pertinent part:

(e) Except as provided in subsections (e-5), (e-10), and (e-15), a provider shall not hold an employee liable for costs related to a non-disputed procedure, treatment, or service rendered in connection with a compensable injury.

....

(f) Nothing in this Act shall prohibit an employer or insurer from contracting with a health care

provider or group of health care providers for reimbursement levels for benefits under this Act different from those provided in this Section. 820 ILCS 305/8.2 (Lexis 2007).

Respondent's Exhibit 4 reflects that payments were made to Midwest Academy of Pain & Spine under codes providing that services were reviewed in accordance with the provider's contract with the insurance company and certain bills were reduced according to the Act's fee schedule. RX4 at 9-20. Based on all of the foregoing, the Arbitrator finds that Respondent has paid all reasonable and necessary medical bills to Midwest Academy of Pain & Spine as contracted and allowed by the Act and, thus, that Respondent has no further liability to this provider for such medical expenses.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

Based on the record as a whole—which reflects two reasonable and necessary multi-level cervical spine surgeries, years of physical and occupational therapies, and Petitioner's credible testimony about his continued pain, limitations, and symptomatology in the neck after his injury at work—the Arbitrator finds that Petitioner has established permanent partial disability to the extent of 30% loss of use of the person as a whole pursuant to Section 8(d)(2).

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

| | |
|--|--|
| <input type="checkbox"/> Affirm and adopt | <input type="checkbox"/> Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> Affirm with changes | <input type="checkbox"/> Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> Reverse | <input type="checkbox"/> Second Injury Fund (§8(e)(18)) |
| <input checked="" type="checkbox"/> Modify | <input type="checkbox"/> PTD/Fatal denied |
| | <input checked="" type="checkbox"/> None of the above |

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lisa Petty,

Petitioner,

14IWCC0309

vs.

NO: 09 WC 16701

Heyl, Royster, Voelker & Allen,

Respondent.

DECISION AND ORDER ON REMAND FROM THE CIRCUIT COURT

On February 14, 2011, Arbitrator Nalefski issued a Decision finding that Petitioner sustained accidental injuries arising out of and in the course of her employment on March 9, 2009, that Petitioner was temporarily totally disabled for a period of 4-1/7 weeks, October 15, 2009 through November 13, 2009, at the rate of \$448.53, that Petitioner is entitled to \$16,348.51 for necessary medical expenses under Section 8(a) and subject to the medical fee schedule, and that Petitioner is permanently disabled to the extent of 20% of the use of the left hand and 20% loss of use of the right hand under Section 8(3) of the WC Act.

On March 10, 2011, Respondent timely filed a Petition for Review, raising issues of accident, causal connection, notice, medical expenses, temporary total disability, and permanent partial disability. Oral arguments were heard by Commissioners Lamborn, Tyrrell, and Donohue on November 15, 2011. On December 23, 2011, the Commission issued a Decision finding that Petitioner failed to provide any type of notice, defective or otherwise, of her repetitive trauma injuries, relying on Peoria County Bellwood v. IC, 115 Ill.2d 524, 505 N.E.2d 1026(1987), and dismissed Petitioner's claim for lack of subject matter jurisdiction. The Commission concluded the evidence in the record indicated Petitioner knew of her injury and its causal link to her work as early as January of 2009, and that Petitioner failed to provide notice of her injury until four months later, with the filing of her Application for Adjustment of Claim on April 16, 2009.

14IWC0309

Petitioner appealed the December 23, 2011 Commission Decision. On August 7, 2012, Judge Crowder of the Third Judicial Circuit Court of Madison County concluded the Commission's Decision was not supported by the facts or law, reversed the Commission's finding, and the matter was "remanded to the Commission for further proceedings."

Respondent appealed the August 7, 2012 Circuit Court Order. On June 7, 2013, the Appellate Court Fifth District dismissed this matter for lack of jurisdiction, finding that the Circuit's Court Order remanding the matter back to the Commission for resolution of questions of law and fact was an interlocutory order and not appealable. The Court further noted that the Circuit Court did not reinstate the Decision of the Arbitrator, but simply stated that "this case is remanded to the Commission for further proceedings."

The Commission, based upon the August 7, 2012 Circuit Court Remand Order, and after reviewing the entire record, reverses itself on the issue of notice, modifies the award of permanent partial disability benefits, and otherwise affirms and adopts the February 14, 2011 Decision of Arbitrator Nalefski, finding that Petitioner sustained her burden of proving that she sustained accidental injuries arising out of and in the course of her employment on March 9, 2009, that Petitioner provided timely notice of accident to Respondent, that a causal relationship exists between those injuries and her current condition of ill-being for her right and left hands, that Petitioner was temporarily totally disabled from October 15, 2009 through November 13, 2009, a period of 4-1/7 weeks, and that Respondent shall pay reasonable and necessary medical services of \$16,348.51 as provided in Section 8(a) of the Act.

However, with regard to the issue of permanent partial disability, and pursuant to the instructions remanding the matter for further proceedings, the Commission modifies the Arbitrator's permanent partial disability award of 20% loss of use of each hand, and finds that Petitioner is entitled to 15% loss of use of the right hand, and 15% loss of use of the left hand, as provided in Section 8(e) of the Act. In so finding, reducing the permanent partial disability award from 20% to 15% loss of use of each hand, the Commission relies upon similar prior commission decisions, Petitioner's release to full duty work one month post operatively, her uncomplicated recovery, and lack of any medical documentation of continuing residual symptoms.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission's prior decision on Review is vacated and that the February 14, 2011 Decision of Arbitrator Nalefski, as modified herein, is affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$448.53 per week for a period of 4-1/7 weeks, from October 15, 2009 through November 13, 2009, that being the period of temporary total incapacity for work under §8(b) of the Act.

14IWCC0309

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$403.68 per week for a period of 61.50 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 15% loss of use of the left hand, and 15% loss of use of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$16,348.51 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

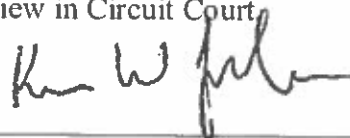
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$43,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **APR 29 2014**

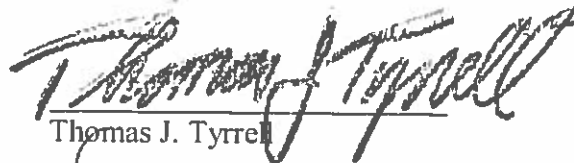
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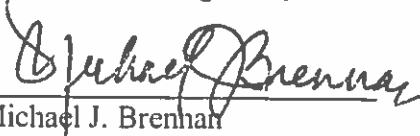
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Kevin W. Lamborn



Thomas J. Tyrrell



Michael J. Brennan

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

| | |
|---|--|
| <input checked="" type="checkbox"/> Affirm and adopt (no changes) | <input type="checkbox"/> Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> Affirm with changes | <input type="checkbox"/> Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> Reverse | <input type="checkbox"/> Second Injury Fund (§8(e)18) |
| <input type="checkbox"/> Modify | <input type="checkbox"/> PTD/Fatal denied |
| | <input checked="" type="checkbox"/> None of the above |

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Darrin Ceska,

Petitioner,

14IWCC0310

vs.

NO: 11 WC 22605
12 WC 30544

City of Chicago,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, benefit rates, medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 27, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0310

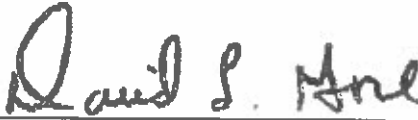
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

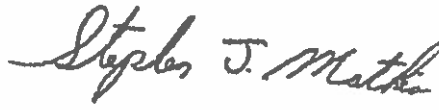
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 29 2014

DLG/gal
O: 4/17/14
45


David L. Gore


Stephen Mathis


Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0310

CESKA, DARRIN

Employee/Petitioner

Case# 11WC022605

12WC030544

CITY OF CHICAGO

Employer/Respondent

On 8/27/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2988 CUDA LAW OFFICES
ANTHONY CUDA
6525 W NORTH AVE SUITE 204
OAK PARK, IL 60302

0766 HENNESSY & ROACH PC
AUKSE GRIGALIUNAS
140 S DEARBORN 7TH FL
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0310

Darrin Ceska
Employee/Petitioner

Case # 11 WC 22605

v.

Consolidated cases: 12 WC 30544

City of Chicago
Employer/Respondent

Applications for Adjustment of Claim were filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Svetlana Kelmanson**, Arbitrator of the Commission, in the city of **Chicago**, on **July 9, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

14IWCC0310

FINDINGS

On **5/18/2011** and **8/27/2012**, Respondent *was* operating under and subject to the provisions of the Act. On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent. On **5/18/2011**, Petitioner *did* sustain an accident that arose out of and in the course of employment. On **8/27/2012**, Petitioner *did not* sustain an accident that arose out of and in the course of employment. Timely notice of the accident on **5/18/2011** *was* given to Respondent. Petitioner's current condition of ill-being *is in part* causally related to the accident on **5/18/2011**. In the year preceding the injury, Petitioner earned **\$71,468.80**; the average weekly wage was **\$1,374.40**. On the date of accident, Petitioner was **40** years of age, *married* with **1** dependent child. Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services. Respondent is entitled to a credit of **\$48,674.74** for TTD, **\$11,015.86** for maintenance, and **\$8,990.15** for non-occupational disability benefits. Respondent is entitled to a credit of **\$59,833.83** for medical expenses under Section 8(j) of the Act.

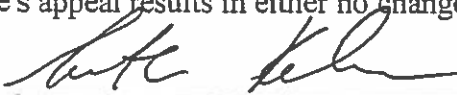
ORDER

Respondent shall pay Petitioner temporary total disability benefits of **\$916.27/week** for **25 2/7** weeks, commencing **May 18, 2011**, through **November 10, 2011**, as provided in Section 8(b) of the Act. Respondent shall be given a credit for the temporary total disability, maintenance and non-occupational disability benefits paid to Petitioner. To receive credit for the non-occupational disability benefits, Respondent must hold Petitioner harmless from any claims by the provider of the non-occupational disability benefits, as provided in Section 8(j) of the Act. Respondent shall pay the medical bills in evidence that Petitioner incurred from May 18, 2011, through October 6, 2011, pursuant to sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for the sums it or its group insurance carrier paid toward these bills. To receive credit for the payments made by the group insurance carrier, Respondent must hold Petitioner harmless from any claims by the group insurance carrier in connection with these bills, as provided in Section 8(j) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

8/27/2013

Date

AUG 27 2013

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner testified that he worked for Respondent as a motor truck driver for 18 years. On May 18, 2011, his work hours were 7 a.m. until 3 p.m. Petitioner's first assignment was to pick up traffic cones from Hollywood Avenue and Sheridan Road. While Petitioner was stopped in northbound traffic on Lake Shore Drive on the way to his first assignment, his work pickup truck, a Ford F 250, was rear-ended "full blast speed" by a Jeep Cherokee. The force of the impact caused Petitioner, who was wearing a seatbelt, to first jerk forward really hard and then jerk back, striking the left side of his head on the headrest and the right side of his head on the rear window. Additionally, the rearview mirror detached and struck him in the forehead. It took Petitioner some time to collect himself and radio for help. Eventually, someone helped him get out of the truck. Petitioner felt nauseous and vomited. He then sat on the curb while a tow truck separated the two vehicles. Petitioner explained that the front of the Jeep became caught in his truck's rear hitch. Petitioner introduced into evidence a photograph of the Jeep, showing damage to the front fender, grille and driver's side headlight, and slight bending of the hood. No other damage is visible. Petitioner further testified that his foreman, Marvin Browder, came to the scene of the accident and took him to Advanced Occupational Medical Specialists for drug and alcohol testing and then to MercyWorks for treatment.

Petitioner admitted that he was involved in a non-work related car accident on February 22, 2011, explaining that after the accident he had some complaints related to his neck and back and treated with Chiropractor Lovell. Petitioner introduced into evidence post-accident photographs of his car, showing some crumpling of the trunk. Petitioner further testified that he returned to work full duty on March 12, 2011. Petitioner denied being under any restrictions on May 18, 2011. However, he admitted he was still treating with Dr. Lovell, explaining that the symptoms in his neck and back were improving.

The medical records in evidence show that Petitioner tested negative for drugs and alcohol. On May 18, 2011, Petitioner complained to Dr. Ali at MercyWorks of neck pain and occipital headache. On physical examination, there was mild to moderate tenderness over the paracervical and trapezius muscles. Petitioner had a full range of motion in the neck, with discomfort. Physical examination was otherwise unremarkable. X-rays of the cervical spine did not show any fracture or dislocation. Dr. Ali prescribed Motrin, Flexeril and Norco, and took Petitioner off work. On May 20, 2011, Petitioner followed up with Dr. Ali, rating his neck pain a 7-8/10 and denying radicular symptoms. He also complained of headaches. On physical examination, there was diffuse tenderness over the cervical spine and paracervical muscles. The range of motion was decreased. Dr. Ali kept Petitioner off work. On May 23, 2011, Petitioner followed up with Dr. Diadula at MercyWorks, rating his headache a 7-8/10 and neck pain an 8/10, with radiation to the right shoulder. Physical examination was essentially unchanged. Dr. Diadula diagnosed cervical and right shoulder strain, and posttraumatic headaches. He ordered an MRI of the cervical spine and kept Petitioner off work. The MRI, performed May 26, 2011, was interpreted by the radiologist as showing a small central disc protrusion at C4-C5 causing mild indentation on the anterior spinal cord, without abnormal spinal cord signal. On June 1, 2011, Petitioner followed up with Dr. Diadula, rating his neck pain a 6/10 and complaining that it was shooting down the shoulders (or right shoulder), without numbness or tingling in the arms and hands. He also continued to complain of headaches. Dr. Diadula noted the MRI findings

and kept Petitioner off work. Petitioner indicated he would seek treatment with Dr. Lorenz, his choice of medical provider.

On June 9, 2011, Petitioner consulted Dr. Lorenz¹ at Hinsdale Orthopedics, complaining of neck pain with radiation to the right shoulder and significant headaches, and giving a history consistent with his testimony. Dr. Lorenz diagnosed a disc herniation at C4-C5 "secondary to the motor vehicle accident on May 18, 2011" and "[r]adicular irritation with post-concussion syndrome." Dr. Lorenz prescribed a Medrol Dosepak and physical therapy, referred Petitioner to a neurologist, and kept him off work.

On June 30, 2011, Petitioner saw Dr. Bijari, a neurologist, on a referral from Dr. Lorenz. Petitioner complained of persistent, severe headaches after the work accident, describing them as "behind eyes and ears," with nausea and photophobia. Neurologic examination was unremarkable. Dr. Bijari diagnosed postconcussive syndrome, prescribed Elavil, ordered an MRI of the brain, and kept Petitioner off work.

On July 8, 2011, Petitioner sought emergency care at Hinsdale Hospital for redness in the eyes. Petitioner testified that his eyes became "bloody" and he developed a very bad headache after riding a stationary bike in physical therapy, and the physical therapist advised him to seek emergency care. Emergency room records from Hinsdale Hospital show the consulting physician thought the redness was "unlikely to be anything neurologic *** since headache symptoms have been since mva with no other neuro findings." Petitioner was referred to Dr. Ticho for follow up. Petitioner introduced into evidence contemporaneous photographs of his eyes, showing redness and irritation in the outside corners.

On July 11, 2011, Petitioner underwent an MRI of the brain, which was normal. On July 12, 2011, Petitioner saw Dr. Ticho, who prescribed eye drops. Petitioner testified that the redness did not recur and he did not return to Dr. Ticho.

On July 20, 2011, Petitioner followed up with Dr. Lorenz, complaining of persistent neck pain with radiation to the right arm and reporting no relief with Medrol Dosepak and minimal relief with physical therapy. Dr. Lorenz recommended a discectomy at C4-C5 and referred Petitioner to Dr. Fronczak, a neurosurgeon, for a second opinion. In the alternative, Dr. Lorenz recommended a functional capacity evaluation. He kept Petitioner off work. On July 25, 2011, Petitioner consulted Dr. Fronczak, complaining of neck pain with radiation and weakness in the right shoulder and providing a history consistent with his testimony. Dr. Fronczak diagnosed "C4-C5 cervical spondylosis with resulting right C5 radiculopathy" and stated that "surgery would be a reasonable option," qualifying that he had only reviewed the MRI report and had not reviewed the MRI films/disc.

On July 28, 2011, Petitioner followed up with Dr. Bijari and reported that the headaches had decreased in frequency, but not the severity. Dr. Bijari expected the headaches to resolve "over the next few weeks to months" and kept Petitioner off work.

¹ During his course of treatment at Hinsdale Orthopedics, Petitioner saw Dr. Lorenz or Dr. Lorenz's physician's assistant, T. Lindley Pittman, who practiced under the supervision of Dr. Lorenz. For the sake of simplicity, all visits are referred to as the visits to Dr. Lorenz.

14IWC0310

On August 1, 2011, Dr. Graf, a spine surgeon, examined Petitioner at Respondent's request. Petitioner complained of constant neck pain radiating to the right shoulder, which he rated a 5-6/10, and described the accident consistently with his testimony. On physical examination, the range of motion in the cervical spine was full, but painful. Petitioner also complained of tenderness to palpation. The Spurling sign was positive on the right. Physical examination was otherwise unremarkable. Dr. Graf interpreted the cervical MRI as showing a very small left paracentral disc bulge at C4-C5, without foraminal stenosis or nerve root compression. Dr. Graf opined that Petitioner was not a surgical candidate and recommended an epidural steroid injection. Regarding Petitioner's work status, Dr. Graf opined that Petitioner could return to work on sedentary duty.

On August 2, 2011, Dr. Lazar, a neurologist and physical medicine/rehabilitation specialist, examined Petitioner at Respondent's request. Petitioner complained of headaches beginning at the base of the neck and radiating to the right ear and behind the eyes, with associated photophobia. He related that the headaches had been decreasing. Petitioner also reported the episode involving his eyes and showed Dr. Lazar pictures of his inflamed eyes. Dr. Lazar opined the pictures "depict an acute conjunctivitis in both eyes, likely to be toxic or viral." On physical examination, Dr. Lazar noted a sustained tremor of the arms and, to a much lesser degree, the feet. Dr. Lazar thought the tremor was non-parkinsonian, benign and unrelated to the accident on May 18, 2011. Physical examination was otherwise unremarkable, with full range of motion in the cervical spine. Dr. Lazar opined that Petitioner sustained a soft tissue injury resulting in spasms of the neck and paracervical muscles, causing headache and neck pain. Dr. Lazar did not think Petitioner suffered a concussion or postconcussive syndrome. Regarding causal connection, Dr. Lazar opined that the accident on May 18, 2011, aggravated preexisting whiplash injury from the non-work related accident on February 22, 2011. Dr. Lazar strongly disagreed that the disc protrusion at C4-C5 was a pain generator, noting that the protrusion was midline, whereas Petitioner complained of right-sided pain. Dr. Lazar further noted that Petitioner had not undergone any electrodiagnostic studies. Dr. Lazar therefore "adamantly" opposed the proposed surgery, stating that Petitioner "would get zero benefit, and have all of the risks of a major surgical procedure." Rather, Dr. Lazar concurred with Dr. Bijari's plan of care, further recommending continuing physical therapy. Dr. Lazar noted that Petitioner was still taking Norco, amongst other medications. Dr. Lazar discouraged long-term use of Norco because of addiction potential, suggesting alternative medications. Lastly, Dr. Lazar suspected "motivational issues" in the event Petitioner did not significantly improve in four to six weeks.

On September 7, 2011, Petitioner followed up with Dr. Bijari, reporting improvement in the frequency and severity of the headaches. Dr. Bijari expected the headaches and postconcussive syndrome to resolve "over the next few weeks" and kept Petitioner off work.

On September 14, 2011, Petitioner followed up with Dr. Lorenz, rating his neck pain a 5-7/10. Dr. Lorenz continued to recommend surgery and kept Petitioner off work.

On October 6, 2011, Petitioner followed up with Dr. Bijari, reporting having only two bad headaches during the past month. Dr. Bijari thought Petitioner's "neck issues are

contributing to his headaches.” From the neurological standpoint, Dr. Bijari released Petitioner to return to work full duty.

On November 11, 2011, Drs. Lorenz and Fronczak performed a discectomy and fusion at C4-C5. Postoperatively, on November 28, 2011, Petitioner reported to Dr. Lorenz he was very pleased with the result and had only mild neck discomfort. However, he noted difficulty swallowing after the surgery. On December 8, 2011, Petitioner followed up with Dr. Bijari, reporting that his headaches were “nearly resolved,” “minor” and “minimal,” and indicating significant improvement in his neck symptoms with the surgery. Dr. Bijari declared Petitioner at maximum medical improvement with respect to postconcussive syndrome and discharged him from care. When Petitioner followed up with Dr. Lorenz on December 12, 2011, he rated his neck pain a 7/10 and reported taking six to eight Norco tablets a day. He also complained of occasional tingling in the right arm and persistent difficulty swallowing. Dr. Lorenz refilled Norco, prescribed Valium, prescribed physical therapy, referred Petitioner to an ear, nose and throat specialist, and kept him off work.

On January 5, 2012, Petitioner saw Dr. Girgis in a referral from Dr. Lorenz for difficulty swallowing. Dr. Girgis noted swelling in the left and right submandibular glands, which he thought was postoperative, also noting evidence of gastroesophageal reflux disease.

On January 18, 2012, Dr. Graf reexamined Petitioner. Petitioner rated his neck pain a 5-6/10 and also reported having headaches in cold weather when the cervical “plate” became cold. Dr. Graf opined that the surgery was not medically necessary, noting that postoperatively Petitioner continued to complain of neck pain and headaches.

On January 23, 2012, Petitioner followed up with Dr. Lorenz, rating his neck pain a 6-7/10 and complaining that it was worse with physical therapy. Dr. Lorenz refilled Norco and Valium, prescribed Naprosyn, ordered a CT scan of the cervical spine, and kept Petitioner off work. The CT scan, performed February 14, 2012, showed normal postoperative changes. On March 5, 2012, Petitioner followed up with Dr. Lorenz, rating his neck pain a 3-7/10, usually a 5/10, and complained that increasing weights in physical therapy made the neck pain worse. He reported taking Norco and Valium sparingly. Dr. Lorenz reviewed the CT scan, noting progressing fusion at C4-C5. On physical examination, Petitioner complained of pain with range of motion testing, but had an almost normal range of motion. Dr. Lorenz discontinued physical therapy, ordered a functional capacity evaluation, and kept Petitioner off work.

On March 7, 2012, Petitioner followed up with Dr. Girgis, reporting no improvement and complaining of fatigue. Physical examination findings were unchanged. Petitioner testified that he did not return to Dr. Girgis after that visit.

A functional capacity evaluation, performed March 22, 2012, placed Petitioner at the light physical demand level. On April 4, 2012, Petitioner followed up with Dr. Lorenz, reporting significant improvement in his neck pain and complete resolution of the headaches and “arm pain.” He also reported no longer having difficulty swallowing. Dr. Lorenz declared Petitioner at maximum medical improvement and released him to return to work at the light physical demand level in terms of lifting, a permanent restriction.

14IWC0310

On April 16, 2012, Steven Blumenthal, a vocational rehabilitation counselor, interviewed Petitioner at the request of his attorney. In a report dated May 17, 2012, Mr. Blumenthal noted that Petitioner exhibited pain behaviors, such as standing up to stretch and holding his hand to his throat frequently. Furthermore, Petitioner complained of daily pain, which he rated a 5-8/10, and migraine headaches "if his cervical plate becomes cold." Petitioner reported taking Hydrocodone mostly at night, unless the pain was a 6-7/10, in which case he also took it during the day. Further, Petitioner reported taking Naprosyn three times a day. Petitioner described significant physical limitations due to his neck and low back conditions, including difficulty driving. Mr. Blumenthal performed vocational testing, noting that Petitioner was a high school graduate, with no specialized certifications other than a CDL class A driver's license. Mr. Blumenthal opined that Petitioner's most direct opportunity to return to work would be as a dispatcher.

On May 23, 2012, Petitioner followed up with Dr. Lorenz, complaining of neck pain, which he rated a 5-6/10. Physical examination was grossly normal, with some discomfort on cervical extension and flexion and mild pain on rotation. Dr. Lorenz kept Petitioner's permanent restrictions and refilled Norco and Naprosyn.

Petitioner submitted into evidence his job search logs, indicating he began looking for work on June 25, 2012. Petitioner testified that on August 24, 2012, Respondent offered him a temporary job, starting the following Monday. Petitioner advised Respondent of his restrictions and medications. Respondent assigned Petitioner to Roaming Control, which required driving a van or a truck eight hours a day. Petitioner introduced into evidence an e-mail from Angie Matos in the Personnel Division of Respondent's Department of Streets and Sanitation, stating that Petitioner's temporary assignment was within the restrictions imposed by Dr. Lorenz. However, Petitioner testified the assignment "broke [his] doctor's restrictions." Petitioner explained that since he held a class A CDL license, he was not supposed to drive under the influence of medication. Respondent told him to take his medications after the work hours.

Petitioner further testified that he reported for work the following Monday, August 27, 2012, after he stopped taking his medications. He was "having withdrawal symptoms really bad" and did not feel he could drive a large vehicle all day. Petitioner described the alleged accident on August 27, 2012, as follows:

"I reinjured my neck driving the van. We were going through alleys and over speed bumps and through the city streets. Because the van was heavy and it's a very heavy duty van, it vibrates a lot. The vibrations and the bounciness totally killed my neck. I wasn't on medicine that I'm normally on every day; so it really, really messed my neck up.

Q. So between the bouncing and hitting speed bumps, what did you notice about yourself?

A. I started getting pain in my neck, swelling up and, later in the day, I had a really bad headache."

14IWCC0310

Petitioner called his supervisor and stated he could not drive anymore because of the pain. When he got to the garage, "they threw [him] off the property" and "told [him] that they were not taking [him] to the doctor, they wouldn't write a report saying [he] was reinjured." Petitioner went home, and his wife drove him to Hinsdale Hospital for emergency care.

Respondent introduced into evidence an unsigned Injury on Duty Report, prepared by Jonathan Fah on September 5, 2012, stating:

"Employee was just reinstated for duty within his restrictions per MercyWorks. Employee states while performing duties for Bureau of Rodent Control, driving laborer around in cargo van. Employee was bounced about, driving over pot holes & speed bumps around 70th & Fairfield. Inturn causing pains in neck, right shoulder, & lower back. Employee states that he informed immediate supervisor George Esquivel & Pearlesa Ford of injuries, they refused to write-up occupational injury report or give blue card for medical treatment. They told employee to sign out and to vacate the property immediately.

Notes: I have a written statement from Mrs. Ford that on 8/27/12 at around 13:15, Mr. Esquivel (Asst. Commissioner), informed me that employee was not feeling well, and that Mr. Esquivel told employee to bring truck in. Mrs. Ford & Mr. Esquivel went to meet employee in the lot. Mrs. Ford asked employee if he was injured. He stated no, but that he was in pain, and was not allowed to take his pain medication after 14:30. Mrs. Ford told employee if he was not injured that he would have to see his own doctor. Employee was then told to fill out edit and go home."

The medical records from Hinsdale Hospital show that on August 27, 2012, Petitioner sought emergency care for right-sided neck pain, stiffness and muscle spasm after driving a van over bumps at work. He also related that he was unable to take his pain medication at work. X-rays showed normal postoperative changes. The attending physician prescribed Norco, ibuprofen and Flexeril and instructed Petitioner to follow up with his primary care physician. On August 29, 2012, Petitioner saw his primary care physician, Dr. Miran, who prescribed a Medrol Dosepak, took Petitioner off work, and instructed him to see a spine surgeon.

On September 17, 2012, Petitioner followed up with Dr. Lorenz, complaining of neck pain, which he rated a 7/10 and attributed to driving all day at work on August 27, 2012. Dr. Lorenz ordered an MRI and a CT scan, prescribed physical therapy and kept Petitioner off work.

On October 20, 2012, Dr. Graf issued an addendum report after reviewing additional medical records showing that Petitioner complained of neck pain and headaches after the non-work related car accident on February 22, 2011, and before the work accident on May 18, 2011.² Dr. Graf noted that Petitioner reported progressive improvement with chiropractic treatment during that time period. Dr. Graf further noted that on May 20, 2011, Chiropractor Lovell noted

² These medical records are in evidence.

no new complaints and stated that Petitioner reported a great deal of improvement in his neck symptoms and significant improvement in his headaches. Dr. Lovell opined that Petitioner was approaching maximum medical improvement and discharged him from care.³ Dr. Graf stated:

“The records produced and summarized *** clearly show ongoing pain and disability related to a non-work related motor vehicle accident in February 2010 [sic] with treatment up to and beyond the date of the work injury in question. In my opinion [Petitioner] appears to be misleading in his documentation of pain and abruptly discontinues months of treatment for claimed pain and disability to apparently pursue a work related accident claim. It is my opinion the records demonstrate that [Petitioner] is not only intentionally misleading his treating providers, but appears to be intentional in his actions and contradictory statements. It is my opinion that [Petitioner’s] claimed pain is in no way related to the May 18, 2011 accident in question. Further, it is my opinion this case be referred for review to the State of Illinois Workers’ Compensation Fraud Investigation Unit.”

On November 12, 2012, Petitioner followed up with Dr. Lorenz, reporting his neck pain a 4-7/10 after undergoing physical therapy. Petitioner stated he had not undergone the diagnostic studies because of lack of authorization. Dr. Lorenz discontinued physical therapy, kept Petitioner off work, reordered the diagnostic studies, and refilled Norco, Valium and Naprelan. The MRI and CT studies of the cervical spine, performed November 14, 2012, showed normal postoperative changes. Additionally, the CT scan showed uncovertebral joint hypertrophy with a moderate degree of left-sided neuroforaminal narrowing at C5-C6. On January 9, 2013, Petitioner followed up, complaining of neck pain, but being more concerned about “the spasms in the front of his neck and tremors in his arms.” Physical examination was grossly normal, except Petitioner exhibited “some essential tremors in the upper extremities.” Dr. Lorenz kept Petitioner off work, refilled Norco and Valium, and referred him to Dr. Bijari. On February 21, 2013, Petitioner followed up with Dr. Lorenz, reporting no improvement in his neck pain. On physical examination, he had a good range of motion in the cervical spine. Dr. Lorenz released Petitioner to return to work on sedentary duty and instructed him to follow up as needed. On March 25, 2013, Petitioner followed up with Dr. Lorenz, rating his neck pain a 5-6/10 and stating that he was unable to work because of the pain. On physical examination, Petitioner had a full range of motion in the cervical spine and “a mild tremor in both arms.” Petitioner indicated he had not received an authorization to see Dr. Bijari. Dr. Lorenz declared Petitioner at maximum medical improvement and stated the sedentary duty restriction was permanent.

On May 21, 2013, Dr. Lorenz issued a narrative report at the request of Petitioner’s attorney, explaining that he had recommended surgery after Petitioner “failed conservative care,” in that he had “no benefit from either physical therapy or [oral] steroid.” The reason for the surgery was “ongoing severe and disabling neck pain with radiation toward the right upper extremity [and] the MRI finding of a disk herniation at the C4-C5, with indentation of the cord.” Dr. Lorenz opined the surgery was reasonable and necessary. Regarding Petitioner’s tremors, Dr. Lorenz stated they “had nothing to do with the neck injury” and were “non-pathologic.”

³ Dr. Graf noted that Dr. Lovell made the same assessment and recommendation on April 22, 2011. However, Petitioner continued to come in for chiropractic treatment.

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Regarding causal connection, Dr. Lorenz opined: "[T]he patient's condition of ill-being, that is in particular a disc herniation at C4-C4 was caused by the motor vehicle accident of May 18, 2011. I further believe that the patient's neck pain that started when driving a box truck on August 27, 2012, was a temporary and minor aggravation of his cervical condition that subsequently reverted to baseline." Lastly, Dr. Lorenz stated he imposed permanent restrictions consistent with Petitioner's functional capacity evaluation.

Petitioner testified that he continues to suffer from persistent neck pain and takes Norco, Valium and Naprosyn every day. He has difficulty lifting more than eight to 10 pounds, performing repetitive motions, or driving a car that does not have a smooth ride. Petitioner wants Respondent to provide him with a job within his restrictions.

In support of the Arbitrator's decision regarding (C), did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator notes that the accident on May 18, 2011, is not in dispute. Respondent disputes the alleged accident on August 27, 2012.

The Arbitrator does not find Petitioner credible. The record shows that Petitioner exaggerated the severity of the collision on May 18, 2011, and his symptoms in an attempt to game the system. Dr. Lazar suspected "motivational issues," while Dr. Graf suspected fraudulent conduct. The Arbitrator further notes that Petitioner has been taking addictive prescription pain medication since late May of 2011. Petitioner tried to avoid returning to work by complaining of persistent, severe symptoms before and after the surgery and describing significant physical limitations during his vocational assessment with Mr. Blumenthal. The medical records show Petitioner's complaints escalated during doctor's visits following his release to return to work on restricted duty.

Regarding the mechanism of the alleged accident on August 27, 2012, the Arbitrator does not see why Petitioner would not have been able to control his speed while driving over bumps and potholes to minimize the bouncing. The Arbitrator notes that after receiving emergency treatment on August 27, 2012, and following up with Dr. Miran on August 29, 2012, Petitioner did not receive any other treatment until seeing Dr. Lorenz on September 17, 2012, at which time his complaints were essentially no different than they were on April 16, 2012 to Mr. Blumenthal and May 23, 2012 to Dr. Lorenz.

For the foregoing reasons, the Arbitrator finds that Petitioner failed to prove he sustained a work accident on August 27, 2012.

In support of the Arbitrator's decision regarding (F), is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

Petitioner testified that a Jeep Cherokee rear-ended his stopped work pickup truck, a Ford F 250, at "full blast speed" on Lake Shore Drive. The force of the impact caused him to first jerk

forward really hard and then jerk back, striking the left side of his head on the headrest and the right side of his head on the rear window. In addition, the rearview mirror detached and struck him in the forehead. Petitioner indicated he needed help to get out of the truck. He felt nauseous and vomited. Then he sat on the curb for a period of time. The photograph of the Jeep shows damage to the front fender, grille and driver's side headlight, and slight bending of the hood. Petitioner testified his work truck was equipped with a rear hitch, which caused damage to the front of the Jeep. Petitioner did not introduce into evidence a photograph of the damage to his work truck. Nor did Petitioner introduce into evidence a police report. The Arbitrator would have expected to see far greater damage to the Jeep from a "full speed" collision with a stopped Ford F 250. The Arbitrator also wonders why no one called an ambulance if Petitioner's description of the accident and his condition immediately thereafter is to be believed.

The Arbitrator finds that Petitioner exaggerated the nature of the accident and his condition after the accident. Drs. Lorenz and Fronczak recommended a highly invasive surgery based almost exclusively on Petitioner's complaints. The Arbitrator notes that the cervical MRI was interpreted by the radiologist as showing a small *central* disc protrusion at C4-C5. Dr. Graf interpreted the cervical MRI as showing a very small *left paracentral* disc bulge at C4-C5, without foraminal stenosis or nerve root compression. Dr. Lorenz did not comment on the lack of correlation between the MRI findings and Petitioner's *right-sided* complaints and did not order electrodiagnostic studies to help determine the origin of Petitioner's complaints. Furthermore, Dr. Lorenz did not attempt any type of meaningful pain management, such as injections, instead hastily concluding that Petitioner failed conservative care because he had "no benefit from either physical therapy or [oral] steroid." Dr. Fronczak, to whom Dr. Lorenz referred Petitioner for a "second opinion," recommended surgery without reviewing the MRI films/disc, having only reviewed the MRI report. Dr. Fronczak, like Dr. Lorenz, did not comment on the lack of correlation between the MRI findings and Petitioner's right-sided complaints.

The Arbitrator gives a great deal of weight to Dr. Lazar's thorough report. Further, the Arbitrator gives substantial weight to the opinions of Dr. Graf that the cervical fusion surgery was medically unnecessary and Petitioner was dishonest about his complaints. The Arbitrator gives no weight to the opinions of Drs. Lorenz and Fronczak, as they lack sound basis.

The Arbitrator finds that the accident on May 18, 2011, caused or aggravated soft tissue injuries to the neck and paracervical muscles and aggravated Petitioner's preexisting headaches. Petitioner reached maximum medical improvement by October 6, 2011, when Dr. Bijari released him to return to work full duty from the neurological standpoint, which was eight weeks after the examination by Dr. Lazar, who expected Petitioner's neck symptoms to stabilize within four to six weeks.

In support of the Arbitrator's decision regarding (J), were the medical services that were provided to Petitioner reasonable and necessary, and has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator awards the medical bills in evidence that Petitioner incurred from May 18, 2011, through October 6, 2011, pursuant to sections 8(a) and 8.2 of the Act, giving Respondent credit for the sums it or its group insurance carrier paid toward these bills. To receive credit for the payments made by the group insurance carrier, Respondent must hold Petitioner harmless from any claims by the group insurance carrier in connection with these bills, as provided in Section 8(j) of the Act.

All other medical bills are denied.

In support of the Arbitrator's decision regarding (K), what temporary benefits are in dispute, the Arbitrator finds as follows:

In its proposed decision, Respondent states that Petitioner is entitled to temporary total disability benefits from May 18, 2011, through November 10, 2011, the day before his surgery. The Arbitrator awards temporary total disability benefits accordingly, giving Respondent credit for the temporary total disability, maintenance and non-occupational disability benefits paid to Petitioner. To receive credit for the non-occupational disability benefits paid to Petitioner, Respondent must hold Petitioner harmless from any claims by the provider of the non-occupational disability benefits, as provided in Section 8(j) of the Act.

